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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appn. No S- 217 of 2022.

Date	Order with signature of Hon'ble Judge
	<u>For Non- Prosecution.</u>

20.5.2022.

Mr. Muzafar Ali Samlio, advocate for the applicant alongwith applicant on bail.

Mr. Ali Anwar Kandho, Addl. P.G.

M/S Suhail Ahmed Veesar and Barkar Ali Jagirani, advocates for the complainant alongwith complainant.

ORDER

MUHAMMAD SALEEM JESSAR-J.:- Through this application, applicant Muhammad Siddique seeks his admission on pre arrest bail in Crime No.05 of 2022 P.S Dokri U/S 337-A(iii), 148 and 149, 504, 114 PPC.

2. The case after thorough investigation has been challaned which is now pending for trial before Judicial Magistrate-2, Dokri. Applicant preferred his bail plea before the Court of Sessions which was assigned to 1st Additional Sessions Judge, Larkana where after hearing the parties the request made by the accused for bail was declined through order dated 16.3.2022.

3. Since the facts of the present case are already mentioned in the FIR which is part and parcel of Court file hence there is no need to reproduce the same.

4. Learned counsel submits that parties are on strained relation to each other over landed dispute besides there is long standing enmity for which both parties have lodged series of the cases against each other. He next submits that FIR is delayed for about 8 days for which no plausible explanation was furnished. Besides the role attributed to the applicant is that he allegedly caused iron rod blow to injured P.W Ali Muhammad which landed

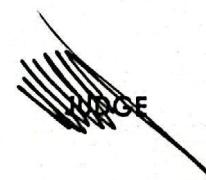
on his head whereas co-accused Zainal Abdin caused pistol butt blow to injured P.W Ali Muhammad which landed on his left arm. He next submits that co-accused Zainal Abdin has been granted pre arrest bail, therefore, rule of consistency apply in this case. He further submits that prior to this incident injured P.W Ali Muhammad had caused pistol shot blow to applicant on 12.12.2021 and to such effect his cousin namely Ali Nawaz got registered FIR No.03 of 2022 with P.S Veehar on 27.01.2022 U/Ss 324, 337-H(2), 337-A(i), F(i), 114, 506/2, 148, 149 PPC and in that case injured Ali Muhammad was assigned specific role of causing firearm injury to applicant. He next argued that case bearing Crime No.03 of 2022 of P.S Veehar has also been challaned which is now pending for trial in the Court of 1st Assistant Sessions Judge, Larkana. He next submits again on 30.01.2022 present complainant had assaulted upon the applicant, therefore, one Mansoor Ali got registered FIR No.04 of 2022 P.S Fatehpur U/S 337-F(v), 337-A(i), F(i), 506/2, 504, 34 PPC. He therefore, submits that in the light of long standing enmity between the parties the case against the applicant requires further enquiry and he may be admitted to pre arrest bail.

5. Learned Addl. P.G opposes the bail plea on the ground that applicant has been assigned specific role of causing iron bar blow to injured P.W Ali Muhammad, therefore, he is not entitled for the bail. He; however, does not controvert the fact that the applicant was also made victim by the injured P.W Ali Muhammad and there exists long standing enmity between the parties.

6. M/S Barkat Ali Jagirani and Suhail Ahmed Veesar, advocates for the complainant also oppose the bail application on the ground that injury allegedly sustained by the injured P.W Ali Muhammad carries maximum punishment of 10 years which exceeds limits of prohibitory clause of Section 497 Cr.P.C, hence he is not entitled for the bail. Both learned counsel admit that there is long standing enmity between parties over landed property for which both parties have got registered cases against each other.

7. Heard and record perused. Admittedly the incident is said to have taken place on 16.02.2022 whereas FIR was lodged on 24.02.2022 though the distance between P.S and place of occurrence is only 1 k.m and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution. The medico legal certificate issued in favour of injured P.W Ali Mohammad shows two injuries and nature of said injuries have been shown as Shajah e Hashmiah falling under Section 337-A(iii) PPC. Co-accused Zainal Abdin had also caused injury to injured P.W Ali Muhammad over his eye which too is fatal part of the body however, co-accused has been granted pre arrest bail. Case of applicant is at par with said co-accused who has been granted bail. Besides the applicant has recorded enmity with injured P.W Ali Muhammad who allegedly caused him firearm injury prior to this incident, had also been granted bail and he is facing trial before the Court having jurisdiction. In the light of existing enmity between the parties the malafides on the part of prosecution stands established, therefore, case of applicant require further probe which entitles the applicant for bail.

8. In the light of existing enmity between the parties which is supported by documents, therefore, basic ingredients for grant of pre arrest bail as have been enshrined by the honorable Supreme Court of Pakistan in the case of Rana Arshad v. Muhammad Rafique and others (PLD 2009 S.C 427) are very much attracted in this case. Accordingly and in view of above, I am of the opinion that applicant has made out a good *prima facie* case for his admission to pre arrest bail within meaning of subsection 2 of Section 497 Cr.P.C. Consequently instant bail application is hereby allowed. Interim pre arrested bail granted to the applicant on 27.4.2022 is hereby confirmed on the same terms and conditions.


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