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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Misc. Appln. No.5-278 of 2023

Date of
Hearing
06.11.2023

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For hearing of Main Case.
3. For hearing of M.A. No.3793/2023.

Mr. Saeed Ahmed B. Bijarani, Advocate along with the applicant.

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

O R D E R

Applicant Ghulam Hussain alias Ghulam Rasool alias Gul Bakhrani was booked in Crime No.26/2023 of Police Station Tangwani, registered under Sections 302, 311, 120-B, 34, PPC. After registration of FIR dated 04.5.2023, the applicant was let-of by the police and his name kept under column No.2 of the challan submitted on 17.8.2023; however, the learned Magistrate did not concur with the opinion of police and joined the applicant as an accused in this case and then transmitted the R&Ps of the case to the Court of Sessions being the ultimate court of trial. After institution of the case, it was assigned to the Court of 1st Additional Sessions Judge, Kandhkot, where same is pending trial vide Sessions Case No.297/2023 re-The State v. Khadim Hussain and others. The applicant has assailed the order dated 17.8.2023 passed by the Magistrate.

2. Learned Counsel for the applicant submits that the applicant was found innocent during investigation, therefore, his name was rightly kept under column No.2 of the challan, but the learned Magistrate without properly appreciating and considering the material collected during investigation has joined the applicant as accused in the case. He, therefore, submits that by granting this application the impugned order may be set aside and the applicant may be let-off from the charge.

3. Mr. Ali Anwar Kandhro, learned Addl. P.G., on the other hand, submits that the impugned order has been acted upon and the Court of Sessions being the ultimate Court of trial has taken cognizance, therefore, the application in hand having become infructuous, it may be dismissed.



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4. When confronted with the above, learned Counsel for the applicant submits that he would not press this application on merits if the non-bailable warrants issued by the trial Court against the applicant may be converted into bailable warrants, so that the applicant may be able to surrender before the trial Court by furnishing requisite surety. In support of this, Mr. Bijarani has relied upon two unreported orders of this Court dated 12.01.2022 passed in Cr. Misc. Appln. No.S-440/2021 re-Ali Bux @ DC Chachar & others v. The State and order dated 20.02.2023 passed in Cr. Misc. Appln. No.S-262 of 2022 re-Manzoor Ahmed v. SHO PS A-Section, Kandhkot & others. This request of learned Counsel for the applicant is not opposed by learned Addl. P.G.

5. Admittedly, the offences with which the applicant stands charged are exclusively triable by the Court of Sessions and the police report is not binding upon the Courts to be acceded to in its letter and spirit. After taking cognizance the Judicial Magistrate has sent up the case papers to the Court of Sessions being the ultimate Court of trial, where the trial Court after taking cognizance has issued non-bailable warrants against the applicant; hence, the impugned order appears to have been implemented/ acted upon, rendering the application in hand to be fit for dismissal. However, since the Counsel for the applicant seeks indulgence, which is not opposed by the learned Addl. P.G.

6. I am fortified with dicta laid down by the Hon'ble Supreme Court of Pakistan while dealing with such like case vide unreported order passed in Criminal Petition No.105-K of 2002 in case of **Shah Murad and others v. The State**, observing as under:-

"There can be no cavil with the proposition that; the trial Court is not bound by the police report submitted under the provisions of Section 173 and 190 Cr.P.C. In law it has ample powers to agree or disagree with the information laid by the police and to discharge a person or to take cognizance of the crime against any person concerned with the commission of the crime whether sent-up or not. Since the trial Court did not act without jurisdiction by summoning the petitioners, to this extent we are convinced that the order was rightly upheld by the High Court, there is however a grievance of the petitioners that; in the first instance, it would always be proper and fair to issue summons or at least bailable warrants in order to secure the attendance of the petitioners who were not sent-up."



7. Accordingly, the non-bailable warrants issued by the trial Court in Sessions Case No 297/2023 re-The State v. Khadim Hussain and others, are hereby converted into bailable warrants, with direction to the applicant to surrender himself before the trial Court by furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R bond in the like amount to the satisfaction of the trial Court. This exercise shall be carried out within 10 days' time. The trial Court is directed to proceed with the trial expeditiously and conclude the same as early as possible

~~JUDGE~~