1. For orders on M.A.No.6035/2023.
2. For orders on office objection 'A'.
3. For orders on M.A.No.6036/2023.
4. For hearing of main case.
5. For orders on M.A.No.6037/2023.

29.12.2023.

Mr. Athar Abbas Solangi, advocate for the applicant along with applicant.

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1.   Granted.

2.   Overruled.

3.   Exemption application disposed of.

4&5.   Learned counsel submits that name of the applicant does not find place in the FIR; however, at belated stage a 161, Cr.P.C statement was recorded by the I.O of the witness whereby he had implicated the applicant in said offence; however, the persons who are nominated in the FIR have not been arrested so far. He next submits that there is no evidence from the side of victim family or by co-accused on whose basis the applicant should have been arraigned, but the Magistrate without applying his judicious mind and without hearing the applicant as well the witnesses of aforementioned crime including the legal heirs of the deceased has passed ex-parte order, which on the face of it seems to be unjustified. He further submits that law relied upon by the Magistrate viz. **2022 YLR Note 42 Karachi** was not approved by the Hon'ble Supreme Court of Pakistan through its esteemed order dated.13.09.2018 vide Crl. Appeal No.382/2018 and Crl. Petition No.738/2018. (A copy of said order has been annexed with the Court file at page 55). He further submits that he will be satisfied if by setting aside the impugned order, case may be remanded to Judicial Magistrate-III, Mehar, for rehearing and fresh decision.

Mr. Ali Anwar Kandhro, learned Addl. P.G., present in Court in some other matters, waives notice of instant Crl. Misc. Application and after going through the case file admits that no equal opportunity was given to either side by the Magistrate, therefore, he has no objection if by granting this application, the impugned order may be set aside and the matter may be remanded to Magistrate for rehearing.

Heard and perused the record.

Perusal of impugned order dated 09.12.2023, passed by Judicial Magistrate-III, Mehar, reveals that Magistrate had not issued notice to the aggrieved cum victim family or the accused and instead of hearing the parties straight away perused the report brought before him under section 173, Cr.P.C, thereby joined the applicant as an accused. The anxiety of the applicant that he being a person of advanced age viz. of about 74 years has been assigned specific role of causing injury to the deceased though he is a notable and elected Chairman of District Council, Dadu; besides, is highly qualified being Postgraduate in English. I have also examined the applicant in Court and from his personal appearance as well as body language the accusation against him requires further probe. It is well settled law that no one should be condemned unheard and everyone has a right of fair trial etc, in case of such eventuality it would tantamount to violation of the provisions of Article 10-A of the Constitution, Islamic Republic of Pakistan, 1973. Hence, I am of the opinion that submissions so advanced coupled with the fact of no objection raised by learned Addl. P.G., the prayer so made carries weight. Accordingly, instant Crl. Misc. Application is hereby allowed. Consequently, the impugned order dated 09.12.2023, passed by Judicial Magistrate-III, Mehar, in respect of report under section 173, Cr.P.C vide Crime No.07/2023, Police Station Bhand Marri, under sections 302, 324, 147, 148, 149, PPC, is hereby set aside. The case is remanded to Judicial Magistrate with directions to issue notice to either

side and after providing equal opportunity of hearing shall decide the fate of report under section 173, Cr.P.C strictly in accordance with law. Meanwhile, the parties aggrieved if intend to submit any document or the evidence, same shall be taken into consideration.

Instant Crl. Misc: Application stands disposed of in the above terms.

Judge

M.Y Panhwar/**