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IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
1st Cr. Bail Application No. 5-181 of 2017

Applicants: Samullah and another through Mr. Ali Nawaz Changho, Advocate

Respondent: The State through Mr. Sardar Ali Shah, APC

Complainant: Vikram Das through Mr. Abid Hussain Qadri, Advocate

Date of Hearing: 14.11.2017

Date of Decision: 14.11.2017

ORDER

Muhammad Saleem Jessar, J. - Through instant application, applicants seek their admission on pre-arrest bail in Crime No. 35/2017 Police Station City, Jacobabad for offence under Sections 452, 337-A(i), 506/2, 403, 147, 148, 149, PPC. The bail plea on their behalf was raised before the learned Sessions Judge, Jacobabad through Bail Application No. 370/2017 but their request was declined by means of order dated 13.5.2017. The case, as reported, has already been challaned by police and same is now pending before the Court of Civil Judge & Judicial Magistrate-I, Jacobabad.

2. Case of the prosecution is that on 28.4.2017 at about 12.30 a.m. (night) complainant heard door knocking and he went to open the door, saw each one Samiullah, Nasrullah by caste Surahio and three unknown culprits. It is further alleged that applicants were having TI pistols in their hands. It is alleged that the applicants have asked the complainant that he had exchanged harsh and hot words with them therefore, he will not be spared, saying so, they caused pistol butt blows to him on his head. Besides, have caused kicks and fist blows. Meanwhile, his father Lakhman and maternal

uncle Ratan Kumar rescued him by putting holy sacks to them. Then the accused decamped from the scene while issuing criminal intimidation. Latter, he noticed that blood was oozing, his mobile phone J-5 Samsung and cash of Rs.35,000 was missing. He therefore, rushed to Police Station where got registered instant case in the terms stated above. After registration of the case police have took up investigation and after completion of formalities submitted challan before the court concerned.

3. Mr. Ali Nawaz Ghangro, Advocate for the applicants submits that the applicants have been implicated falsely as they are active members of Sarafa Association and the complainant is also member of that association. Due to professional intrigue and on certain matters arose over association proceedings he has implicated them falsely as complainant was intending to mould the association's decisions as per his whims. It is alleged that during scuffle/quarrel the belongings of complainant have been missing and have not been secured. Prima facie, shows that the offence has not taken place as reported because alleged incident occurred at his door then how his belongings have been missing. Moreover the applicants were with weapons and did not use the same by making any fire only its butt blows have been caused. Such his version shows malafide on the part of complainant which is prime ingredient for grant of pre-arrest bail as has been held by Honourable Apex Court in the case of Muhammad Arshad v. The State (PLD 2009 SC 427). He further submits that there is no specific role of causing injury to the complainant however, general role has been assigned. The complainant was referred to medicolegal officer; after examination medicolegal certificate has been issued. The injury allegedly sustained by Complainant has been declared as Shajjah-i-Mudihah in terms of Section 337-A(ii), PPC which



carries maximum punishment up to five years but proper section has not been applied by the police in the F.I.R as well in the challan. He next submits that offence with which the applicants have been charged does not fall under the prohibitory clause of section 497, Cr.P.C, therefore, case against them requires further enquiry and prays for confirmation of bail.

4. Learned APG appearing for the State in view of dictum laid down in the case of Muhammad Tanveer v. The State PLD 2017 SC 733 has recorded no objection.

5. Mr. Abid Hussain Qadri, Advocate for the complainant has opposed the application on the ground that the applicants have caused injuries to the complainant on his vital part of the body. He next argued that applicants have went to his home door at night time and therefore, they do not deserve any leniency particularly in shape of pre-arrest bail.

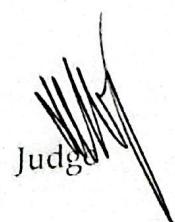
6. I have heard counsel for the parties and have gone through the material made available before me. Admittedly, the offence as shown has taken place in the night time and source of identification has not been given in the FIR that how the complainant could able to recognize the applicants in odd hours of night and the plea taken by the defence that they being members of the Sarafa Association are well known to each other and have professional jealousy carries weight. No specific role of causing injuries to them is assigned except general role and the sections applied in the F.I.R does not warrant application of section 497 (1), Cr.P.C. In view of the dictum laid down by the Honourable Supreme Court of Pakistan in the case of



Muhammad Tanveer v. The State (PLD 2017 SC 733), whereby it has been held as under:

"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a Constitutional Court to deal with intricate question of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation. That prisons were accommodating convicted and under-trial prisoners more than double their capacity and State authorities were involved in transporting such prisoners from the prisons to the Court premises on daily basis for Court hearings which involved risks and extra expenditures from the public exchequer and that grant of bail in offences not falling within the prohibitory limb of S. 497, Cr.P.C. was a rule and refusal an exception, therefore, all subordinate Courts, Special Courts and Tribunals should follow said principle in its letter and spirit."

7. In view of the dictum laid down by Honourable Supreme Court of Pakistan in the case of *Mohammad Tanveer* (Supra) and the case of *Tarique Bashir and 5 others v. The State* (PLD 1995 SC 34), instant bail application is allowed. The interim bail granted to the applicants vide order dated 16.01.2017 is hereby confirmed on the same terms and conditions.



Judge