

W

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Apnl. No. S- 471 of 2017.

Date of hearing	Order with signature of Judge
06.12.2017.	

1. For orders on office objections.
2. For hearing of bail application.

Mr. Irfan Baddar Abbasi, Advocate for applicant.
Mr. Aijaz Mustafa Samtio, DDPP.

~~~~~

**Muhammad Saleem Jessar, J-** Through this bail application, applicant Abdul Karim Jasseri seeks pre-arrest bail in Crime No.44/2017 of P.S Mirpur Burro, District Jacobabad, registered for offences punishable under Sections 337-A (i), 337-A (ii), 504 & 34 P.P.C.

The bail application moved by the applicant before the Court of learned Sessions Judge, Jacobabad, was declined by means of Order dated 04.08.2017.

Per F.I.R, the allegation against applicant is that on 10.07.2017 he in company of other co-accused caused "Soti" blow to PW Muhammad Jam on his head. The motive for the alleged incident, as set out in the F.I.R is dispute between the parties over matrimonial affairs.

Learned counsel for applicant mainly contended that, F.I.R is delayed for five days; parties are already inimical towards each other over matrimonial affairs and that the except Section 337-A (ii) P.P.C, rest of the Sections applied in the F.I.R are bail-able, while Section 337-A (ii) P.P.C do not fall within prohibitory clause of Section 497 Cr.P.C. Per learned counsel, it is well settled law by the Hon'ble Apex Court that in the cases which do not fall within prohibitory clause of Section 497 Cr.P.C, the grant of bail is rule and refusal is an exception. In support of his contention, learned counsel has relied upon case of *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), *Riaz Hussain and others versus The State and others* (2014 YLR 1120 Lahore).

The learned counsel further submitted that, authenticity of medical certificate of injured Muhammad Jam was challenged by the applicant party and due to non appearance of injured/PW Muhammad Jam before the Board, the special medical board has kept such certificate in "abeyance", vide letter No.3584/88 dated 11.10.2017 issued by the Secretary/ Conveyor of Special Medical Board, CMC Hospital, Larkana, therefore, it has got its sanctity.

Learned DDPP appearing for the State opposed grant of bail in favor of the applicant on the ground that he has been nominated in F.I.R with specific role of causing head injury to PW Muhammad Jam.

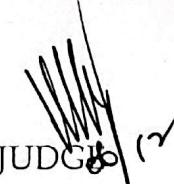
Record reflects that, the parties are already inimical towards each other and the F.I.R is also delayed one and that the injury assigned to applicant though is on head of PW Muhammad Jam, but it has been declared as "*Shajjah-i-Mudihah*" falling under Section 337-A (ii) P.P.C, which carries punishment upto only five years and do not fall within prohibitory clause of Section 497 Cr.P.C, while rest of the Sections applied in the F.I.R are bail-able. In the cases not falling within prohibitory clause of Section 497 Cr.P.C., the grant of bail is rule and refusal is an exception as has held by the Hon'ble Apex Court in its numerous judgments. Furthermore, recently the Hon'ble Supreme Court of Pakistan in case of *Muhammad Tanveer v. The State and another* (supra) has observed 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."

Moreover, the authenticity of medical certificate of injured Muhammad Jam was challenged before the Special Medical Board and the Board has kept such certificate in "abeyance", therefore, *prima-facie* its sanctity has become questionable. Furthermore, the applicant has already joined the trial and attending the trial Court.

Accordingly, in view of above position and the dictum laid down by Hon'ble Supreme Court in case of *Tariq Bashir v. The State* (PLD 1995 S.C 34) and case of *Muhammad Tanveer v. The State and another* (supra), the instant application stands allowed. Consequently, interim pre-arrest bail already granted to applicant vide Order dated 28.09.2017 is hereby confirmed on same terms and conditions.

  
JUDGE

Ansari/\*