

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-37 of 2019

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection 'A'.
2. For Hearing of bail application.

07.03.2019

Mr. Sher Ali Chandio, advocate for the applicant along with applicant (on bail).

Mrs. Seema Abbasi, advocate for the complainant.

Mr. Sharafuddin Kanher, A.P.G.

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Muhammad Saleem Jessar, J- Through instant Crl. Bail Application, under section 498, 498-A, Cr.P.C, applicant Shahid Ali son of Ismail, seeks his admission on pre arrest bail in Crime No.02/2019 registered at Police Station Radhan Station, Taluka Mehar, District Dadu, under sections 337-F(vi), 147, 148, 149, 504, PPC.

2. Pre arrest application bearing Crl. Bail Appln. No.61/2019 was preferred by the applicant along with co-accused Sajid and Ayaz Ali before the Court of Ist. Additional Sessions Judge, Dadu who by means of order dated 16.01.2019 granted pre arrest bail to co-accused Sajid and Ayaz Ali, whereas ad-interim of Shahid son of Ismail Solangi (the present applicant) was declined on the ground that he caused Iron bar blow on the right leg of injured Munwar Ali being punishable for imprisonment of either description of seven years.

3. The crux of prosecution case is that the complainant Mehboob Ali has lodged FIR mentioning therein that on 29.11.2018 he, his brother-in-law Munwar Ali & Wazir Ali boarded on motorcycle and were coming from village to Radhan Station, at about 12:00 hours when they reached at Pir Musafir where on two motorcycles, accused every one Shahid, Sajid and Tariq Ahmed got stopped the motorcycle and

abused the complainant party and accused Shahid (present applicant) caused Iron Rod blow to Munwar Ali on his right leg who while raising cries fell down on the ground, then all the accused ran away by abusing the complainant party. Thereafter, the complainant brought the injured Munwar at PS and obtained letter for medical treatment and FIR to that effect was registered.

4. Mr. Sher Ali Chandio, learned counsel for the applicant submits that the applicant is innocent and he has falsely been implicated in this case with ulterior motives by the complainant. Learned counsel further submits that from the contents of the FIR, it is indicative of the fact that the parties are on inimical terms with each other over the matrimonial affair. Learned counsel further submits that the FIR has been lodged with the delay of about forty one days for which no plausible explanation has been furnished by the prosecution. Learned counsel further adds that the alleged injury attributed to the applicant is Ghyr Jaifah Munaqqillah falling under section 337-F(vi) and the punishment provided for the same is only seven year, which does not fall within the prohibitory clause of Section 497(1), Cr.P.C. He next submits that co-accused Sajid and Ayaz Ali have already been granted anticipatory bail through the same order by the trial Court but only the applicant Shahid has been deprived of same concession. Learned counsel submits that looking to aforesaid situation, the case against applicant requires further enquiry as envisaged under sub-section (2) of Section 497, Cr.P.C, therefore, he seeks confirmation of his earlier order dated 21.01.2019.

5. Learned A.P.G has opposed the bail application on the ground that the applicant is named in the FIR with specific role of causing injury to injured Munwar Ali on his right leg. Therefore, he prays for the dismissal of the aforesaid bail application.

6. Mrs. Seema Abbasi, learned counsel for the complainant also opposes the bail application by submitting that the name of the applicant transpires in the FIR coupled with specific role of causing Iron bar blow upon the right leg of injured Munwar Ali and the punishment provided for the said injury is seven years.

7. I have heard learned counsel for the applicant, learned A.P.G and counsel for the complainant and have gone through the material made available before me on record

8. Admittedly there is unexplained delay of forty one days in lodging of the FIR, though the distance between the place of incident and the Police Station is only 2 Kilometers. The injury attributed to the applicant is not on the vital part of the body and the same has been certified as Ghyr Jaifah Munaqqillah falling under section 337-F(vi) and the punishment provided for the same is only seven years, which does not fall within the prohibitory clause of Section 497(1), Cr.P.C. As per the FIR, parties are on inimical terms with each other. Co-accused have already been admitted to bail before arrest by the learned Ist. Additional Sessions Judge, Dadu, vide order dated 16.01.2019. Moreover, the alleged injury sustained by the injured on his right leg which is not on vital part of the body. I have gone through the police file with able assistance of learned A.P.G and find that memo of injuries dated 29.11.2018 reveals mention of one injury which is as under :

“(a) One blow swelling type over right leg”

(b) As per provisional medicolegal certificate bearing No.479 dated 29.11.2018 shows the kind of injury as (1) contusion on front of upper part of right leg 6 c.m x 4 c.m.

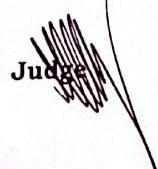
9. Per final Medicolegal certificate No.484 dated 14.12.2018 the reserved injury as per Medicolegal Officer has been declared as Ghyr Jaifah Munaqqillah, which does not show the fracture of his bone and the punishment provided by law for such injury i.e. 337-F(v) only is

seven years which also does not fall within the prohibitory clause of section 497, Cr.P.C. In the circumstances, reliance can be placed on the case reported as (1994 P.Cr.L.J 1769).

10. Furthermore, in such like cases, where the offence does not fall within the prohibitory clause of section 497, Cr.P.C, the Hon'ble Supreme Court of Pakistan in the reported case of Muhammad Tanveer v. The State and another (PLD 2017 Supreme Court 733), has observed as under :

"6. 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 questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

11. For what has been discussed above the applicant has successfully made out a case for grant of extra ordinary relief of pre arrest bail, therefore, interim pre arrest bail already granted to him vide order dated 21.01.2019 is confirmed on the same terms and conditions.


Judge

M.Y.Panhwar/**