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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 29 of 2019.

Date of hearing	Order with signature of Judge
25.02.2019.	

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

Mr. Ahsan Ahmad Quraishi, Advocate for applicants.
Mr. Ahmed Hussain Khoso, Advocate for complainant.
Mr. Sharafuddin Kanhar, A.P.G.

Muhammad Saleem Jessar, J- Through this bail application, applicants Azizullah and Habibullah seek their admission to post-arrest bail in Crime No.55/2018, registered at P.S Dil Murad (District Jacobabad), for offences punishable under Sections 435, 436, 427, 147, 148 and 149 P.P.C.

The bail application moved by the applicants before the learned Sessions Judge, Jacobabad, was declined vide Order dated 21.12.2018, passed in Crl. Bail Appln. No. 1053/2018.

The facts of the case are that on 29.11.2018 complainant Muhammad Umar Khoso lodged F.I.R with P.S Dil Murad, which reads as under:

"It is compliant that, I am "Jamandar" on the land of Rehmatullah Khan Khoso, situated in Zangi-pur. Ahsan Ali son of Barkat Ali and Rahimdad son of Rab Nawaz Khoso and others are residing in a hut, constructed in the land. On 27.11.2018 in the night time, we all three were sitting in the hut, and at about 1.00 a.m. we came out of the hut due to some commotion and while flashing torches, we saw and identified accused Ashique Ali, 2. Shoukat Ali, 3. Liaquat Ali, all three sons of Habibullah, 4. Azizullah, 5. Hidayatullah both sons of Khan Muhammad, 6. Habibullah son of Muhammad Ibrahim, 7. Muhammad Ibrahim alias Kuraro son of Hidayatullah, 6. Manzoor Ahmed son of Rasool Bux all by caste Behrani Jatt, resident of village Zangi-pur, Taluka Thull, who had small cans containing diesel (oil) in their hands; they were accompanying six unknown persons, who were armed with T.T pistols, they were with open faces and have been seen by us very well and could be recognized, if seen again; they came in the "Dera". The arms bearing accused persons overpowered us and asked not to raise any hue and cry and we being empty handed remained silent and within our sight, rest of all the accused,

while sprinkling the oil over "Dera" of paddy grains and on hut, set them on fire with match-boxes and the entire "Dera" got fire. Then all the accused persons with their weapons ran away by foot towards western directions. We conveyed such information to our landlord; the fire brigade also reached, but the entire "Dera" containing paddy crop and a hut completely burnt. We remained busy in extinguishing the fire for whole the day and now I have come and report the matter that above named accused person with their common intention, while setting on fire the "Dera" of 200 Jirebs of land and living hut have caused damage, which include about four hundred mounds of "super" and irri-6 rice. I am complainant, pray for justice."

Learned counsel for applicant mainly contended that, F.I.R is delayed for about a day; that malafides on the part of complainant are very much clear from the fact that he has roped the accused most from one and same family; that the alleged incident is said to have taken place during dark hours of night and source of identifying the culprits has been disclosed as torchlight, which is very weak type of source and cannot be relied upon, as such question of mistaken of identity cannot be ruled out and it is beyond imagination that during dark hours of night, one can identify as many as six persons properly, in the light of torch and that there is no recovery of any torch or any other incriminating article i.e. cans, match boxes etc., except ashes from place of vardat. Learned counsel further contended that instant case has been got registered by landlord/ Zamindar of complainant, namely, Rehmatullah, who, on 10.11.2018, in company of some other accused persons entered into house of applicant Azizullah and on show of force of weapons forcibly abducted away his wife, namely, Mst. Sahib-zadi and presently she is with him, but since landlord of complainant is very influential person of area, the area police was not willing to register case/ F.I.R of applicant Azizullah for abduction of his wife, as such he got orders from Court of law and ultimately his F.I.R was registered on 02.12.2018 vide Crime No.56/2018 against Rehmatullah and others. Per learned counsel all the Sections applied in the F.I.R are not falling within prohibitory clause of Section 497 Cr.P.C, except Section 436 P.P.C., though ingredients of Section 436 P.P.C, do not attract to the instant case, as no any building used for worship or human dwelling house has been allegedly set on fire, but as per contents of F.I.R, a katcha made hut/ shed was set on fire by the accused persons. He further added that, offence under Section 436 P.P.C

is punishable with imprisonment for life or with imprisonment of either description for a term which shall not be less than three years nor more than ten years and it is well settled law that, at the time of deciding bail application lesser punishment should be taken into consideration by the Court. He lastly added that, case stands challaned and applicants are not required to police for the purpose of investigation. In support of his contentions, learned counsel placed his reliance upon 2006 YLR 3167.

Learned A.P.G. assisted by learned counsel for complainant opposed the grant of bail in favor of applicants on the ground that the applicants are nominated in the F.I.R with specific role of setting the "Dera" of paddy weighing 4000 mounds and a hut on fire and that the offence is heinous one and falls within prohibitory clause of Section 497 Cr.P.C.

Heard learned counsel for the applicants, learned A.P.G. and learned Advocate for complainant, as well as perused the material available on record, with their able assistance.

It appears that there is delay of about a day in lodging F.I.R. The incident is alleged to have taken place in night hours and source for identifying the culprits is said to be torchlight, which appears to be very weak type of source, as such mistaken of identity cannot be ruled out. It further appears that there is no recovery of aforesaid torch, so also other incriminating articles i.e. cans, match boxes etc. The contention of learned counsel for applicants that prior to this, the landlord of complainant, namely, Rehmatullah, had abducted away wife of applicant Azizullah on 10.11.2018 and such F.I.R No.56/2018 was lodged with same police station against said Rehmatullah and instant case is filed on instance of landlord Rehmatullah just to create counter blast case and to put pressure upon applicants' party. Perusal of F.I.R No.56/2018 reflects that incident disclosed therein taken place on 10.11.2018, while incident shown in instant F.I.R is of 28.11.2018, as such contention of learned counsel for applicants bears some force and supports defence plea. Furthermore, the offence under Section 435 P.P.C and others do not fall within prohibitory

clause of Section 497 Cr.P.C, whereas main Section 436 P.P.C., carries alternate punishment i.e. imprisonment for life or with imprisonment of either description for a terms which shall not be less than three years not more than ten years and it is well settled principle of law that when the alleged offence is punishable with maximum as well as minimum quantum of sentence, the Court may consider the minimum sentence at bail stage. The case has already been challaned and applicants are no more required to police for purpose of investigation.

A tentative assessment of all the above factors and the material available on record makes the case of applicants one of further enquiry in terms of *subsection (2) of Section 497 Cr.P.C.* Accordingly, the instant bail application stands allowed. Consequently, the applicants are admitted to post arrest bail, upon their furnishing solvent surety in the sum of Rs.100,000/- (*One hundred thousand rupees*) **each** and P.R bonds in the like amount to the satisfaction of learned trial Court.

Needless, to mention that the observations made herein above are tentative in nature and would not prejudice case of either party at trial.

JUDGES

Ansari*