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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Cr. Bail Appln. No.S-140 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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21.03.2019.

1. For orders on office objections.
2. For hearing of Bail Application.

Applicant Zahid Hussain Mangnejo present in person on ad-interim pre-arrest bail.

Mr. Sharafuddin Kanhar, APG.

Applicant Zahid Hussain son of Sahab Khan Mangnejo seeks his admission on pre-arrest bail in Crime No.111/2018, registered at P.S Naudero, under Sections 337-A(i), 337-F(i), 337-A(vi), 504, PPC. The case after investigation has been challaned by the police. The bail plea of the applicant preferred through Bail Application No.266/2019 before the first forum i.e. VI-Additional Sessions Judge, Larkana has been declined vide order dated 27.02.2019.

2. The crux of the prosecution case as unfolded by complainant Mst. Ikram Khatoon wife of Zahid Hussian Mangnejo in her FIR lodged on 07.12.2018 is that her husband used to scuffle with her on domestic affairs. It is alleged that an amount of Rs.300,000/- was given to the complainant by her father for keeping the same in her custody, out of which an amount of Rs.100,000/- was obtained by her husband Zahid Hussain from her for business of cattle. It is alleged in the FIR that on 28.11.2018, in the morning time, she, her daughter Rabia and son Mohammad Ayaz were available in their house, when at about 9.00 a.m. her father Mohammad Ramzan came at her house. After that, at about 10.00 a.m., complainant's husband Zahid Hussain (present applicant) and co-accused Asif Ali son of Ali Dino Mangnejo also came there. Complainant's father asked the Zahid Hussain through complainant to return the amount of Rs.100,000/-, which he had obtained from complainant for cattle business, on which accused Zahid Hussain and Asif Ali got infuriated and inflicted lathi blows to the complainant. The lathi blow inflicted by accused Zahid Hussain hit on her right arm and the lathi blows given by accused Asif Ali hit on head and other parts of body of complainant, hence she raised cries, on

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which both the accused persons fled away. She then lodged such FIR on 07.12.2018.

3. Mr. Sharafuddin Kanhar, learned APG Sindh, appearing for the State, after going through the police papers as well as medicolegal certificate of injured/complainant Mst. Ikram Khatoon, issued by Women Medical Officer, RHC, Naudero, bearing No.44, dated 06.12.2018, very candidly concedes and submits that Section 337-A(vi), PPC has wrongly been applied by the police, therefore, he has no objection for confirmation of pre-arrest bail.

4. Complainant despite notice has chosen to remain absent.

5. Heard the applicant/accused in person and Mr. Sharafuddin Kanhar, learned APG, Sindh, appearing for the State and perused the material made available before me on record with his able assistance.

6. Per FIR, the applicant is alleged to have inflicted lathi blow to the complainant at her right arm and the injury on the head of complainant/victim is attributed to co-accused Asif Ali. It is astonishing to note that police have applied Section 337-A(vi), PPC, which was also mentioned in the challan, but the final medicolegal certificate issued by Women Medical Officer, Rural Health Centre, Naudero in respect of injured/complainant Mst. Ikram Khatoon, shows that two injuries have allegedly been caused to her and same have been declared by the WMO to be *Shajjah-i-Khafifah* falling under Section 337-A(i), PPC and *Jurh Ghayr Jaifah Munaqqillah* falling under Section 337-F(vi), PPC, which carry maximum punishment upto 07 years and thus do not exceed the limits of prohibitory clause of Section 497(1), Cr.P.C. Even from the contents of FIR, no offence in terms of Section 337-A(vi), PPC is made out, nor even such contention is available on record, which may constitute such an offence. I could not gather the wisdom behind application of Section 337-A(vi), PPC, which is not borne out from the medicolegal certificate as well as from the FIR. The wisdom behind adding/applying wrong section, which involves maximum punishment, by the police has shown their intention to make the case of carrying maximum punishment, besides, to strengthen the scope of sentence, so that the accused may be deprived of his liberty and may not get concession of bail. Such conduct on the part of police/prosecution

shows either they are incompetent and inefficient or they have some malafide against the accused, whatever the case may be, proves the contention of accused to be true to the effect and extent that his arrest is intended by the prosecution out of malafide and for ulterior motives. Therefore, in my view, the basic ingredients for grant of pre-arrest bail in view of dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of *Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC-427) are very much attracted. Reliance can also be placed on the case of *Khalil Ahmed Soomro & others v. The State* (PLD 2017 SC 730), wherein Hon'ble Supreme Court of Pakistan has observed as under:-

"4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497, Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police."

6. In view of whatever has been discussed hereinabove, legal position of instant case is applicant has succeeded to make out a good prima facie case within the meaning of subsection (2) to Section 497, Cr.P.C.

7. Accordingly, instant bail application is hereby allowed. The interim pre-arrest bail granted to the applicant on 05.3.2019 is hereby confirmed on same terms and conditions.

JUDGE