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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Bail Appln. No.S-141 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.

21.03.2019.

Mr. Sarfraz Khan Jamali, advocate for the applicant along with applicant (on bail).

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 Moowso alias Muhammad Moosa son of Muhammad Ramzan, seeks his admission on pre arrest bail in Crime No.33/2012 registered at Police Station Nasirabad, under sections 462-B, 13 ANA, 427, 379, PPC.

2. Pre arrest application bearing Crl. Bail Appln. No.281/2013 was preferred by the applicant before the Court of Sessions Judge, Kamber Shahdadkot, who by means of order dated 29.04.2014 declined the bail application

3. The crux of prosecution case is that the complainant Ghulam Raza son of Muhammad Saleh Memon lodged the FIR at above Police Station mentioning therein that he is Admin Officer in PARCO Oil Company Shikarpur, 3. On 04.04.2012, he along with his staff proceeded to check the PARCO Pipe Line, where they saw and identified accused every one Zameer, 2.Niaz Hussain, 3. Mashooque, 4.Ali Muhammad, 5. Muhammad, 6.Mooso, 7.Mumtaz & four unidentified person were committing theft of oil and putting the same in drums and seeing the complainant party fled away and thereafter the complainant lodged the FIR to that effect.

4. Learned counsel for the applicant submits that after rejection of pre arrest bail application by the trial Court, the applicant could not arrange surety, therefore, he remained fugitive from law.

However; as and when he arranged surety has surrendered before this Court. He next submits that the conduct of the applicant is to be considered as even being absconder he again appeared voluntarily before this Court to have remedy in shape of pre arrest bail. However, after grant of interim pre arrest bail by this Court he joined the trial proceedings on 08.3.2019, therefore, his alleged absconson is not much of consequence. He also submits that all the co-accused who too were declared proclaimed offenders by the trial Court, on their surrender or arrest have been acquitted of the charge in terms of Section 265-K, Cr.P.C and therefore, the rule of consistency as well as propriety of law demands that the applicant may also be extended constant treatment. In support of his contention he places certified copy of order dated 28.01.2014, passed by the Additional Sessions Judge, Kamber in Sessions Case No.519/2012 (Re: The State v. Moso @ Muhammad Moosa and others). Perusal of order reveals that co-accused Mashooq has been acquitted under section 265-K, Cr.P.C, copy of order is taken on record. In compliance of the order passed by this Court learned trial Court/Additional Sessions Judge, Kamber has furnished its report in respect of the trial which reveals that co-accused Mumtaz Abro was also acquitted by the trial Court under section 265-K, Cr.P.C. Learned counsel has placed his reliance on the cases of Mitho Pitafi v. The State (2009 SCMR 299) and Ishtiq Ahmed v. The State through Additional Advocate General and another (2017 YLR 2333) and submits that the proper procedure as provided by law under Criminal Procedure Code had not been complied with. He; therefore, submits that interim pre arrest bail granted earlier to him may be confirmed.

5. On the other hand Mr. Sharafuddin Kanher, learned A.P.G opposes the bail application on the ground the applicant was already on anticipatory bail granted to him by the trial Court which was declined on merits by the trial Court in the year 2014 and right from 2014 till

date he remained absent for which no justification has been advanced to substantiate his absconson. However, he could not controvert the fact that co-accused have been acquitted and mere absconson, particularly in view of the dictum laid down by the Hon'ble Supreme Court of Pakistan in case of Mitho Pitafi (supra) in which it has clearly been observed that if accused had good case for bail on merits then mere his absconson would not come in his way to intercept or may withhold the concession of bail to an accused.

6. I have heard learned counsel for the applicant as well as learned A.P.G for the State and have gone through the material made available before me on record.

7. Admittedly co-accused Mashooque Ali Kalhoro and Mumtaz have been acquitted of the charge and their acquittal was not challenged by the prosecution, therefore, it attained finality. The FIR is also delayed for one day for which no plausible explanation has been furnished by the prosecution. Moreover, the offences with which the applicant stands charged are not carrying capital punishment or even ten years which may bring the case of the applicant under prohibition clause of Section 497(1), Cr.P.C. Reliance can be placed upon the case of Baloo @ Piyar Ali (2000 P.Cr.L.J 1508). It is settled law that mere absconson does not intercept the way for grant of bail to an accused, if otherwise merits of the case are favouring him. In the present case, no doubt the applicant remained fugitive/absent for a noticeable period but subsequently he preferred to surrender himself voluntarily before this Court through instant application which *prima facie* establishes that his conduct was not wrong and due to certain complications as pointed out by the counsel he was compelled to remain absent from the Court of law. In view of such conduct of the applicant, *vis-à-vis* voluntarily appearance before this Court, the alleged absconson is not much of consequence. Since co-accused have already been acquitted of the charge and if he will be taken into custody then no technical or legal

purpose would be served on the ground tomorrow again he will be bailed out on the law of parity. Reliance can be had from the case of Muhammad Ramzan v. Zafarullah and another (1986 SCMR 1380) and case of KHALIL AHMED SOOMRO and others v. The STATE (PLD 2017 Supreme Court 730). The cumulative effect and upshot of the discussion is that the applicant has made out a good *prima facie* case for his admission on pre arrest bail within meaning of sub-section (2) of Section 497, Cr.P.C. Consequently instant bail application is allowed. Interim order passed earlier dated 05.03.2019 is hereby confirmed on the same terms and conditions.

Judge