

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

Crl. Bail Appln. No. S- 14 of 2019.

Date of hearing	Order with signature of Judge
04.02.2019.	

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

Mr. Miran Bux Soomro, Advocate for applicant alongwith applicant.

Mr. Sharafuddin Kanhar, A.P.G.

Muhammad Saleem Jessar, J- Through this bail application, the applicant Nasir alias Nasir Ali seeks pre-arrest bail in Crime No.63 of 2018, registered with P.S Guddu, District Kashmore @ Kandhkot, for offences punishable under Sections 337-A (i), 337-F (i), 337-F (iii), 337-H (2), 403, 114, 506 (2), 147, 148 P.P.C.

The bail application moved by the applicant before the Court of learned Sessions Judge, Kashmore @ Kandhkot, was declined by learned 1st Additional Sessions Judge, Kandhkot, vide Order dated 17.12.2018

According to contents of F.I.R, the allegation against applicant is that on 04.12.2018, he in company of other co-accused caused "hatchet" blow to PW Shamas Ali on calf of his leg, whereas co-accused Ahsan is also alleged to have caused lathi blow to PW Shaman Ali on his left side ribs and mid of right leg, whereas another co-accused Arab has been assigned role of causing lathi blow to PW Ashique Ali on his right hand. The motive for the alleged incident, as set out in the F.I.R is dispute between the parties over cutting of trees from the land.


Learned counsel for applicant mainly contended that, the FIR is delayed for more than five days; that malafides on the part of complainant are very much clear from the fact, that he has roped the accused from one and same family, as the applicant alongwith his brothers has been booked in this case; that according to F.I.R the applicant has been assigned role of

causing hatchet blow to PW Shamas Ali on calf of his leg, which is not vital part of body; that co-accused Ihsan has also been assigned role of causing lathi injury on mid of leg of PW Shamas Ali, but he has been granted pre arrest bail by same learned Judge through same impugned order, though, case of both the accused is mostly on same footings. Learned counsel further contended that according to medical certificate of injured/ PW Shamas Ali the injury No.1 (which is assigned to present applicant), has been declared as *Jurh Ghayr Jaifah Mutalahimah* falling under Section 337-F (iii), P.P.C and do not fall within prohibitory clause of Section 497 Cr.P.C, as it is punishable upto only three years. 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).

Learned A.P.G. 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 hatchet injury to PW Shamas Ali.

Record reflects that, the parties are already having grudge and ill-will against each other over matter of cutting of trees; that the F.I.R is also delayed one and the injury assigned to applicant is not only on non-vital part of body of injured/ PW Shamas Ali, but it has been declared as *Jurh Ghayr Jaifah Mutalahimah* falling under Section 337-F (iii), P.P.C, which carries punishment upto only three years and do not fall within prohibitory clause of Section 497 Cr.P.C. 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 been held by the Hon'ble Apex Court in its numerous judgments time and again.

Moreover, co-accused Ahsan has been admitted to bail by the learned trial Court and case of present applicant appears to be mostly on same footings, therefore, rule of consistency is applicable to the case of present applicant. The applicant has already joined the trial.



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 *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733), the instant application stands allowed. Consequently, interim pre-arrest bail already granted to applicant vide Order dated 09.01.2019 is hereby confirmed on same terms and conditions.


JUDGE

Ansari/*