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ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Bail Appln. No. S-61 of 2019

Date	Order with signature of Judge
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1. For order on office objection.
2. For hearing of bail application.

14-03-2019.

Mr. Ali Nawaz Ghanghro, advocate for the applicant.

Mr. Habibullah G. Ghouri, advocate for the complainant.

Mr. Aitbar Ali Bullo, D.P.G for the State.

MUHAMMAD SALEEM JESSAR, J:- Through instant criminal bail application, applicant Ramesh Lal alias Ramesh Kumar seeks his release on bail in Crime No.91/2018 of P.S. Market, Larkana, registered under Sections 324, 386, 34, PPC.

2. After registration of case, investigation was carried out and on completion of the requisite formalities challan against the accused was filed by the police on 28.09.2018. The case at the moment is pending for trial before the V-Additional Sessions Judge, Larkana vide Sessions Case No.28/2018, re: State V/S Ramesh Lal @ Ramesh Kumar. The bail plea raised by the applicant was declined by V-Additional Sessions Judge, Larkana vide order dated 14.01.2019, hence this application before this court.

3. The crux of the prosecution case as unfolded by the complainant Bhagchand in his FIR recorded on 14.09.2018 is that the accused Ramesh Lal had been demanding bhatta from him and had threatened him that on failure he would kill him. It is alleged that on the day of incident, the complainant was proceeding towards Sabzi Mandi, Larkana, when he was confronted with accused, who was accompanied by two unknown outlaws, who while intercepting, asked him that he was asked to pay Rs.20,00,000/- (Rupees two million) as bhatta, but he failed for which he will not be spared. By saying so, the applicant/accused allegedly caused knife-katt (dagger in large size) blow to the complainant aimed to commit his qatal-e-amd, but he went on back foot, therefore, it went to hit his ear and therefore, the blood was oozed and then the accused decamped on motorcycle driven by his companions towards Siddiqui Para. Complainant then rushed to police station and got his case registered.

4. Learned counsel for the applicant submits that allegation against the applicant, who is hindu and resident of Thariri Muhabat, district Dadu, is that he had been demanding bhatta from complainant. This question raises many multiple queries that a hindu particularly hailing from the out area would dare to commit such offence. He next submits that the injury allegedly sustained by the complainant/injured has been declared by the medlco legal officer as *Shajjah-i-Madihah*, falling under Section 337-A(ii), PPC and is carrying punishment of five years, which also does not fall within the prohibitory clause of Section 497, Cr.P.C. He next submits that it is settled law that every accused is deemed to be blue-eyed boy of the law, unless he is found guilty of charge. He next submits that if after trial the applicant/accused is found innocent, then the period spent by him in jail as well as the golden moments of his life, during incarceration, cannot be repaired with, therefore, in these circumstances bail becomes right and refusal will be an exception.

5. Learned DPG for the State opposes the bail application on the ground that applicant is nominated in FIR with specific role and the medical version is corroborates to ocular version, besides, the recovery of certain articles has also been effected. He, therefore, submits that the applicant does not deserve to be enlarged on bail.

6. Mr. Habibullah G. Ghouri, advocate files his vakalatnama on behalf of the complainant, which is taken on record. By filing vakalatnama, he also opposes the bail application by adopting arguments advanced by the learned DPG.

7. I have heard the learned counsel for the applicant, learned counsel for the complainant as well as learned DPG for the State and have gone through the material made available before me on record.

8. The applicant/accused as well as the complainant both belong to minority and a person from minority would commit such offence raises many queries; however, from the record there appears some other dispute between the parties and it appears that the complainant in order to punish him severely has filed the instant case. Moreover, the applicant, as is apparent from the record, belongs to other district and being a hindu he cannot be believed to commit such an offence in the heart of Larkana City, where many people used to remain available. As far as 'bhatta' is concerned, neither it was paid nor anything is shown to have been robbed from the complainant at the time of alleged occurrence. Thus, applicability of section 386, PPC would be determined by the trial court after recording evidence, whether it was rightly

applied or otherwise. The injury as opined by the medicolegal officer carries punishment of 5 years, which does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, bail becomes right and refusal will be an exception. I am also fortified with the dictum laid down by the Honourable Supreme Court of Pakistan in the case of *Muhammad Tanveer versus The State* (2017 PLD S.C 733), wherein following observations were recorded:-

"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."

9. It is also settled law that every accused is to be presumed to be blue-eyed boy of the law until and unless he is found guilty of charge; besides, law cannot be stretched upon in favour of prosecution particularly at bail stage. Apart from that, if an accused is granted bail wrongly and at the trial he is found guilty of the charge(s), such wrong committed in shape of his release on bail can be repaired by sending him to jail; however, if at the end of trial he is not found guilty, then the period spent by him inside the jail cannot be compensated in terms of money.

10. I am of the humble view that case against the applicant requires further inquiry within the ambit of subsection (2) of Section 497 Cr.P.C. Consequently, instant bail application is allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees on lac) and P.R bond in the like amount to the satisfaction of trial court.

11. Instant bail application stands disposed of.

Judge