

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

16

Crl. Bail Appln. No. S- 125 of 2017.

Date of hearing	Order with signature of Judge
11.09.2017.	

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

Mr. Saeed Ahmed Bijrani, Advocate for applicants.
 Mr. Ahsan Ahmad Quraishi, Advocate for complainant
 Mr. Aijaz Mustafa Samtio, DDPP.

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Muhammad Saleem Jessar, J: Applicants Ghulam Yasin, Abdul Jabbar and Liaquat are present alongwith their counsel; seeks their admission on pre arrest bail in Crime No.08/2016 of P.S RD-44 (District Jacobabad), for offence under Sections 392, 394 P.P.C.

The case, as is evident from the file has already been challaned by the police on 16.10.2016 and same is now pending trial before Court of learned Civil Judge and Judicial Magistrate, Thull (District Jacobabad). Identical application was moved by the applicants Ghulam Yasin and Abdul Jabbar before learned Sessions Judge, Jacobabad, by means of Crl. Bail Appln. No. 59/2017, but by order dated 11.03.2017, it was declined; however the applicant Liaquat Ali has directly approached this Court through instant application alongwith others.

The crux of prosecution as unfolded in F.I.R bearing crime No.08/2016 are that complainant party and the accused are on strange relations over "Siyahkari" (adventurous), therefore, on 23.8.2016 the applicants/ accused allegedly duly armed with weapons had caused injuries to the complainant party and thereby had robbed their motorcycle mentioned in the F.I.R. To such effect, present F.I.R was lodged.



Learned counsel for the applicants submits that the parties are on strange relations to each other and it was quite impossible for human psyche that an opponent without hiding his face rob motorcycle from his opponent in broad day. He next submitted that the complainant party in order to exert illegal pressure upon accused party on account of adventurous has got roped in the applicants in this false case. He next contended that nothing incriminating was shown to have been recovered from possession of the applicants and the injuries sustained by the injured/PW Muhammad Ismail have been declared by the Medico Legal Officer as Ghayr Jaifah Hashmihah falling under Section 337-F (v) P.P.C, which carries maximum punishment for five years, while rest of injuries have been declared as Ghayr Jaifah Damiyah falling under Section 337-F (i) P.P.C, which are bailable. It is further argued that alleged motorcycle has been stated to have been recovered from the heap of grass but not from sole possession of applicants or from their house. In view of above submissions and delay in lodging of F.I.R, the learned counsel submits that case of applicants requires further enquiry and prays for confirmation of bail.

Conversely, on the other hand learned DDPP has opposed bail application on the ground that the applicants are nominated in F.I.R with specific role and robbed motorcycle is shown to have been recovered from heap of grass lying adjacent to the houses of applicants, therefore, they are connected with commission of offence and no case for pre arrest bail is made out.

Learned Advocate for complainant has also opposed the bail application by adopting the arguments of learned DDPP and further submitted that applicants are nominated in F.I.R besides they have committed offence in broadness of the day, hence question of false implication does not arise.

Heard arguments; perused the record made available. Admittedly, the parties are inimical towards each other on the ground of "Siyahkari" (adventurous) and when both the parties are knowing to each other, even

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then filing of F.I.R with delay of two days is questionable. The delay in lodging the F.I.R in criminal case always not be treated to fatal for prosecution, but circumstance if suggest so the scope of further enquiry remains open for the accused. The recovery has not been effected from sole possession of the applicants and the offence, with which the applicants are charged are carrying, if proved by the prosecution, not more than five years, thus do not exceed limits of prohibitory clause of Section 497 Cr.P.C. The learned Sessions Judge while declining bail application of applicants has placed his reliance upon case of Muhammad Arshad reported in 2009 PLD S.C 427 and has wrongly interpreted said ruling, as by virtue of the same the conditions prescribed by the Hon'ble Supreme Court are very much transparent. The complainant himself has admitted the grudge with applicants which is prime ingredient of malafide and is sufficient for grant of pre-arrest bail. This is the soul of wisdom and dictum laid down by Hon'ble Supreme Court of Pakistan in case of Muhammad Arshad (supra). The applicants have proved malafide on the part of complainant being inimical towards each other and this aspect has not been considered by the Court below. Moreover, the case is being tried by the Magistrate, therefore, punishment of more than three years cannot be visualized. In view of guiding principles contained in case of *Tariq Bashir and 5 others vs. The State* reported in 1995 PLD S.C 34, the case against applicants require further inquiry. Accordingly, instant application is allowed. Interim order passed earlier dated 10.04.2017 is hereby confirmed on same terms and conditions.

JUDGE

21/2/2017

Ansari\*