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

Crl. Bail Apnl. No. S- 469 of 2017.

| Date of hearing | Order with signature of Judge |
|-----------------|-------------------------------|
| 20.11.2017. | |

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

Mr. Abdul Hakeem Brohi, Advocate for applicant.

Mr. Sardar Ali Rizvi, D.P.G.

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Muhammad Saleem Jessar, J- Through this bail application, applicant Inayatullah alias Inayat Hussain seeks pre-arrest bail in Crime No.25/2010 of P.S Mohammadpur Odho, District Jacobabad, registered for offences punishable under Sections 457, 380 P.P.C.

The bail application moved by the applicant before the Court of learned Sessions Judge, Jacobabad, was declined by means of Order dated 14.09.2017.

The crux of prosecution case is that on 27.10.2010 complainant Syed Abdul Razzak Shah the Head Master of Govt. High School Mohammadpur Odho reported the matter to police to the effect that during flood in the year 2010, on an unknown date and time the computer, eclectic fans and other articles were stolen away from the school and ultimately he has come to know that above articles were stolen away by accused persons, namely, Ali Khan, Inayatullah accompanying with four unknown persons, as such complainant met above named accused, who admitted their guilt and promised to complainant for return of the same, but later on they refused, as such the complainant reported the matter to police.

Learned counsel for applicant mainly contended that, F.I.R is delayed one and even no date and time of the alleged incident is mentioned in the F.I.R; that incident is un-seen and un-witnessed, as nobody had seen any of culprit while committing theft from the school,

but it is only word and claim of the complainant that he came to know that such and such persons have committed theft and they admitted before him their guilt. Per learned counsel this is an extra judicial confession, which has got no evidentiary value. That, the alleged offences do not fall within prohibitory clause of Section 497 Cr.P.C. Learned counsel submits that the learned Court below has declined bail to the applicant on the ground that he has remained absconder for more than seven years. In support of his contentions, learned counsel placed his reliance on the case laws reported as *Ayaz Ali and 2 others versus The State* (2000 P Cr. L J 1031), *Khan alias Khan Muhammad Mangrio and 2 others versus The State* (2010 MLD 311), *Muhammad Asif Siddiqui versus The State* (2011 MLD 677), *Sheikh MUZAFFAR HUSSAIN and another versus The State* (2000 P Cr. L J 518), *Mitho Pitafi versus THE State* (2009 SCMR 299) and *Sharbat & another versus THE State* (SBLR 2003 Sindh 848).

Learned D.P.G opposed grant of bail, but could not controvert the above submissions advanced by learned counsel for the applicant.

I have heard the learned counsel for the applicant, learned D.P.G. and perused the material with their able assistance.

Record reflects that, no date and time of the alleged incident is mentioned in the F.I.R and it is delayed one. Per contents of F.I.R, the incident is un-seen and un-witnessed, as nobody including complainant and his witnesses had seen any of culprits while committing theft from the school; however there is only word of the complainant that he came to know that accused named in the F.I.R have committed theft and when he met them, they admitted their guilt. The learned Court below while dismissing bail application of the applicant has observed that since applicant has remained absconder, he is not entitled for extra ordinary concession of bail. In this regard, the Honourable Supreme Court of Pakistan in the case of *MITHO PITAFI versus THE State* (2009 SCMR 299), has observed that bail could be granted, if the accused has good case for bail on merits and mere his absconson would not come in the way while granting him bail.

Moreover, the applicant has already jointed the trial and attending the trial Court and no purpose would be served if the applicant is refused pre arrest bail and ultimately granted post arrest bail. The offences, with which the applicant stands challaned do not fall within prohibitory clause of Section 497 Cr.P.C and 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 held by the Hon'ble Apex Court in its numerous judgments. Furthermore, recently the Hon'ble Supreme Court of Pakistan in case of *Muhammad Tanveer v. The State and another* (PLD 2017 Supreme Court 733) has observed as under:

"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 question of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation. That prisons were accommodating convicted and under-trial prisons more than double their capacity and State authorities were involved in transporting such prisoners from the prisons to the Court premises on daily basis for Court hearings which involved risks and extra expenditures from the public exchequer and that grant of bail in offences not falling within the prohibitory limb of S. 497, Cr.P.C. was a rule and refusal an exception, therefore, all subordinate Courts, Special Courts and Tribunals should follow said principle in its letter and spirit."

Accordingly, in view of above position and dictum laid down by Hon'ble Supreme Court in case *MITHO PITAFI versus THE State* (2009 SCMR 299), *Tariq Bashir v. The State* (PLD 1995 S.C 34) and case of *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 27.09.2017 hereby confirmed on same terms and conditions.

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JUDGE  
11-11-2017

Ansari/\*