

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1163 of 2022

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

For hearing of main case.

11.11.2022.

Mr. Ghulam Shabbir Mari, Advocate for applicant alongwith applicant (on bail)

Ms. Sana Memon, Assistant P.G.

ORDER

Muhammad Saleem Jessar, J. - The complainant of this case has chosen to remain absent.

2. Through this bail application, the applicant Ghulam Hyder seeks his admission on pre-arrest bail in Crime No.60 of 2022 registered at P.S Mangli under Sections 380, 459, 511, 337-F(vi) PPC. The applicant as well co-accused Ali Hyder filed Bail Application No.927 of 2022 before the Court of Sessions at Sanghar, where after hearing the parties the request of the applicant for anticipatory bail was turned down; whereas, co-accused Ali Hyder was granted pre-arrest bail; hence, this bail application has been filed by accused Ghulam Hyder.

3. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by learned Sessions Judge, Sanghar; therefore, there is no need to reproduce the same in order to save precious time of the Court.

4. Learned Counsel submits that allegation against the applicant is that he allegedly caused *lathi* blow to complainant's wife namely Mst. Habib Khatoon which hit on her left arm and the injury has been declared as 337-F(vi) PPC, which carries maximum punishment upto five years. He further argued that prior to this incident the applicant and co-accused had filed F.C Suit No.107 of 2019 before the Court of Ist Senior Civil Judge, Sanghar against complainant Allah Dad and others which is still pending adjudication; therefore, in order to exert illegal pressure upon the applicant the complainant has cooked up instant false case so that applicant may surrender and meet with his unjustified demands. He further submits that mala fide on the part of complainant, in view of above recorded enmity, has been established; therefore, the applicant is entitled for extraordinary relief. In support of his contention, he places reliance upon the cases of MUHAMMD IJAZ v. The

STATE and others (2022 SCMR 1271), HALEEM RAJAR and 4 others v. The STATE (2020 YLR Note 66) and MUHAMMAD JAHANZAIB and others v. The STATE and others (2020 YLR 1544).

5. Learned Assistant P.G has recorded her no objection.

6. Heard and perused the record. Admittedly, the incident as shown had occurred on 28.09.2022; whereas FIR was lodged on 10.10.2022 with delay of about more than 12 days and distance between the police station and place of incident is 25/26 kilometers. The parties are known to each other being entangled in a civil litigation; therefore, lodgment of FIR with certain delay explains the truth. The civil litigation is pending adjudication between the parties and in such situation it was impossible for the applicant as well co-accused to enter into the house of complainant by night and caused injuries to inmates; hence, it shows that the complainant has not come with his clean hands. The pendency of a civil litigation between the parties coupled with delay in lodgment of FIR shows that the arrest of the applicant is motivated by the mala fide intention of the complainant party. In the circumstances, reliance is placed upon the case of **Rana MUHAMMAD ARSHAD v. MUHAMMAD RAFIQUE and another (PLD 2009 Supreme Court 427)**. The case is being tried by the Court of Additional Sessions Judge-I, Sanghar, where the applicant after furnishing surety has been appearing and no complaint regarding misuse of concession extended to him has been brought on record.

7. The upshot of above discussion is that the applicant has successfully made out his *prima facie* case for pre-arrest bail. Consequently, instant bail application is hereby allowed and ad-interim pre-arrest bail already granted to the applicant vide order dated 01.11.2022 is confirmed on same terms and conditions as contained in the said order.

8. It is pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Shahid