

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1259 of 2022

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

1. For orders on office objections.
2. For hearing of main case.

05.12.2022.

Mr. Muhammad Iqbal Qassar, Advocate for applicant alongwith applicant (on bail)

Ms. Sana Memon, Assistant P.G.

ORDER

Muhammad Saleem Jessar, J, - The complainant in spite of issuance of notice to him has chosen to remain absent.

2. Through this bail application, applicant Muhammad Zaman @ Abro seeks his admission on pre-arrest bail in Crime No.119 of 2022 registered with P.S Talhar District Badin under Sections 337-A(i), 337-F(i), 337-F(vi), 504, 34 PPC. Prior to filing of this application, the applicant filed Criminal Bail Application No.1848 of 2022 before the Court of Sessions at Badin, where after hearing the parties, his request for pre-arrest bail was turned down.

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

4. At the very outset, learned Counsel for applicant submits certified copy of case diary dated 26.11.2022 issued by the Civil Judge & Judicial Magistrate / Judge Consumer Protection Court, Badin / trial Court; taken on record. Per case diary, the applicant on furnishing surety before this Court has surrendered himself before the trial Court and has joined trial proceedings. Learned Counsel submits that applicant has been assigned the role of causing *lathi* blow to complainant which missed and inadvertently hit to injured Master Ghulam Qadir on his leg instead. The injury as opined by the Special Medical Board has been declared to be punishable under Section 337-F(vi) PPC and carries maximum punishment of 07 years. He; therefore, submits that case does not fall beyond the scope of prohibition; hence, submits

that by granting instant bail application, the interim bail granted to him on 21.11.2021 may be confirmed.

5. Learned Assistant P.G Sindh has opposed the bail application on the ground that injury allegedly caused by applicant carries seven years' punishment.

6. Heard and perused the record.

7. Admittedly, The incident as per F.I.R had occurred on 18.05.2022 and report thereof was lodged on 11.08.2022 with delay of three months though the distance between place of incident is only 11/12 kilometers away from police station and such an inordinate delay has not been plausibly explained by the prosecution. The delay in criminal cases has always been deprecated by the superior Courts and has been held to be fatal for the prosecution particularly at bail stage. Reverting back to the merits of the case, the injury allegedly sustained by injured has been declared by the Medico Legal Officer to be punishable under Section 337-F(vi) PPC which carries maximum punishment upto seven years and does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. The case is being tried by learned Magistrate, where after recording evidence if prosecution may succeed to prove the charge against the accused, even then punishment of more than three years cannot be visualized.

8. In the circumstances and in view of dicta laid down by the Hon'ble Supreme Court in the case of **MUHAMMAD TANVEER v. The STATE & another (PLD 2017 Supreme Court 733)**, the case against applicant requires further inquiry within the meaning of sub-section (2) of Section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed. The interim pre-arrest bail already granted to the applicant in terms of order dated 21.11.2022 is confirmed on same terms and conditions.

9. 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

