

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-1248 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

15.12.2022

Mr. Altaf Sachal Awan, Advocate for applicant alongwith applicant (on bail)

Mr. Shahzad Ahmed Narejo, Advocate for complainant.

Mr. Abdul Waheed Bijarani, Assistant P.G.

ORDER

Muhammad Saleem Jessar, J, - Through this bail application, applicant Gul Muhammad seeks his admission on pre-arrest bail in Crime No.43 of 2022 registered at P.S Diplo District Tharparkar at Mithi, under Sections 337-A(ii), 337-L(ii), 452, 114, 506, 504, 147, 148, 149 PPC. Prior to filing of this application, the applicant alongwith co-accused filed Bail Application No.416 of 2022 before the Court of Sessions at Dadu, where after hearing the parties, his request for bail was turned down; whereas co-accused were granted bail.

2. 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, Tharparkar at Mithi; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. Learned Counsel for the applicant submits that incident as narrated in the F.I.R had occurred on 16.10.2022 and report thereof was lodged on 06.11.2022. He next submits that there are general allegations against the applicant and the offences with which the applicant has been shown involved are bailable. He further submits that co-accused have been granted bail by the trial Court while the request of applicant, who has been assigned same role as that of co-accused, has been declined. He next submits that applicant after furnishing surety has not misused the concession extended to him by this Court; hence, pray for confirmation of bail.

4. Learned Assistant P.G Sindh as well learned Counsel for complainant have submitted that accused has been nominated in F.I.R with

specific role; hence, is not entitled for the bail. However, they could not controvert the fact that punishment provided by the law for said offence is upto 05 years; thus, does not exceed the limits of prohibitory cause of Section 497 Cr.P.C. They have relied upon the case of JUMO KHAN alias MUHAMMAD JUMAN and 5 others v. The STATE (2021 YLR Note 68).

5. Heard. Record perused.

6. Admittedly, the incident is said to have taken place on 16.10.2022; whereas report thereof was lodged on 06.11.2022 with delay of about 20 days though the distance between Police Station and place of incident is stated to be 30/35 kilometers; however, no plausible explanation has been furnished for such an inordinate delay. Though the applicant has been assigned specific role of causing hatchet blow to injured / complainant which landed on his head; however, it has not been specifically mentioned under the F.I.R whether the accused used sharp side hatchet blow or otherwise. Per Medico Legal Certificate, the kind of weapon is shown to be hard and blunt substance. The injury allegedly sustained by the complainant has been declared by M.L.O as *Shajjah-i-Madyah* to be punishable under Section 337-A(ii) PPC for which maximum punishment is upto five years and does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. The case has been challaned and applicant after furnishing surety has been appearing before trial Court and no complaint regarding misuse of concession extended to him has been brought on record.

7. 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 and consequently interim pre-arrest bail already granted to the applicants vide order dated 16.11.2022 is confirmed on same terms and conditions.

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