

(53)

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln. No. S- 44 of 2022.

Date	Order with signature of Hon'ble Judge
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1. For orders on office objection as flag A.
2. For hearing of bail application.

27.5.2022.

Applicant Muhammad Ali Shah is present in person on bail.

Mr. Ahsan Ahmed Qureshi, advocate for the complainant..

Mr. Ali Anwar Kandhro, Addl. P.G.

O R D E R.

MUHAMMAD SALEEM JESSAR-J.:- Through this application, applicant Muhammad Ali Shah seeks pre arrest bail in Crime NO. 141 of 2021 registered with P.S A-Section Thul for offence under Section 42, 506/2, 337-A(ii) and 34 PPC.

Applicant present submits that on 16.5.22 due to ailment he was not in attendance, therefore, B.Ws were ordered to be issued against him and notice under Section 514 Cr.P.C against his surety. He next submits that such his absence neither was willful nor deliberate; however, was and beyond his control, therefore, prays that it may be condoned. He submits that they have inimical terms with complainant as his brother in law Syed Nasir Hussain Shah got registered case against husband of complainant and they had strained relations over landed dispute, hence he has been implicated falsely. He further submits that he has not caused any injury to any body but complainant in collusion with MLO and police has cooked up instant story which has no independent legs to stand upon. He; therefore, prays for confirmation of bail.

Learned Addl. P.G opposes the bail application on the ground that he is nominated in the FIR with specific role, therefore, prays for dismissal of the bail application. However, learned Addl. P.G when confronted with the FIR which is delayed for about 2 months and offence with which applicant has been charged carries maximum punishment upto seven years.

Mr. Ahsan Ahmed Qureshi, advocate opposes bail application on the ground that applicant has caused lathi blow to the complainant which landed on her head. However he also does not controvert the fact that enmity between complainant and accused with regard to the landed dispute has been admitted.

Heard argument. Perused the record.

Admittedly the incident is said to have taken place on 20.01.2021 and FIR was lodged on 08.11.2021 which is after delay of two months of the occurrence. Delay in criminal cases has always been held by the superior Courts as fatal for the prosecution. Moreover the enmity over landed issue is admitted by the complainant in her FIR which is sufficient ground for establishing malafide, therefore, ingredients for grant of pre arrest bail as has been enshrined by the Supreme Court in the case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 S.C 427) are very much attracted in this case. More over case is being tried by Court of Judicial Magistrate where after recording evidence of prosecution witnesses if prosecution may succeed to prove its charge even then punishment of more than 3 years can not be visualized.

In the circumstances and in view of dictum laid down by the Apex Court in the case of Muhammad Tanveer v. The State (PLD S.C 733), case against applicant requires further enquiry within the meaning of subsection 2 of Section 497 Cr.P.C. Consequently bail application is allowed. Interim pre arrest bail granted to the applicant on 16.5.2022 is hereby confirmed on same terms and conditions.

JUDGE

shabir

← Apph-er Dr Mulla

- 1) - Per order on MA no, 3022/23 (4/A)
- 2) - Per order on MA no, 3023/23 (561-A)

Accountant - Rept-as flag "B"