

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Ist. Crl. Bail Apnl. No.S-587 of 2023.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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19.02.2024.

1. For orders on office objection 'A'.
2. For hearing of bail application.

Mr. Arif Ali Kalhoro, advocate for the applicant.

Mr. Muhammad Afzal Jagirani, advocate for the complainant.

Mr. Aitbar Ali Bullo, D. P. G.

O R D E R .

MUHAMAD SALEEM JESSAR-J Through instant bail application, applicant Meeran Bux son of Bahadur Luhar, seeks his release on post arrest bail in Crime No.132 of 2023 registered at Police Station New Faujdari, District Shikarpur, for offence punishable under sections 395, 396, PPC.

2. Per available record, the applicant was arrested on 07.07.2023. After completion of investigation, the case has been challaned by the police, which is now pending for trial before the Court of III-Additional Sessions Judge, Shikaprur, vide Sessions Case No.475 of 2023, Re-State v. Mureed and others. The bail application filed by the applicant before the trial Court was dismissed by means of order dated.15.09.2023, hence instant bail application has been maintained.

3. Learned counsel for the applicant submits that the name of the applicant does not find place in the F.I.R; besides, complainant got examined himself before the police on 27.06.2023, through 161, Cr.P.C/further statement whereby he had implicated/disclosed the names of Jan Muhammad and Mureed; however, out of both one Jan

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Muhammad was let off by the police and such report was also accepted by the Court concerned which attained finality. Again the complainant got himself examined on 05.07.2023, whereby he had implicated the present applicant without assigning any role. He; therefore, submits that further statement cannot be equated with the status of the FIR, therefore, case against the applicant requires further enquiry and prays for his release on bail.

4. Learned D. P. G, appearing for the State, after going through the police papers submits that though per challan the applicant at the time of his arrest was shown to have been equipped with lathi; however, no such memo of recovery is available in police file, therefore, he does not oppose instant bail application.

5. Learned counsel for the complainant opposes the application on the ground that the applicant was identified by the complainant at the time of incident, therefore, he had implicated him through his second further statement dated 05.07.2023 and consequently the offensive weapon viz. Lathi was recovered from him, therefore, he is not entitled for the bail. He; however, could not controvert the fact that in his further statement the complainant had not made any specific allegation against the applicant. In support of his contention he has placed his reliance upon the case of MUHAMMAD IQBAL alias IQBAL JATOI v. THE STATE (2011 YLR 2031). In the circumstances, he prays for rejection of instant bail application.

6. Heard arguments of learned counsel for the applicant, learned counsel for the complainant and learned D.P.G for the State and perused the material available on record with their assistance.

7. Admittedly, name of the applicant does not find place in the F.I.R and the F.I.R of this case was registered on 20.06.2023, whereas, complainant was firstly examined by the Investigating Officer on

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27.06.2023 through further statement with the delay of 07 days where he had implicated one Jan Muhammad and other one, Mureed; however, out of both, one Jan Muhammad was let off by the police and such report was also accepted by the Court concerned which attained finality but the complainant has not assailed the order of Magistrate. Again the complainant got himself examined through further statement on 05.07.2023, whereby he had implicated the applicant without assigning any role. The name of the applicant does not find place in the F.I.R; besides applicant has been arrayed by the complainant in this case through his further statement which was recorded with the delay of about 16 days and no valid reason has been assigned in the further statement for such fatal delay. It is settled law that further statement cannot be equated with the status of the F.I.R and it is nothing but to support the prosecution case only to strengthen its rope. Reliance can be had from the case of MUHAMMAD RAFIQUE and others v. THE STATE (2010 SCMR 385). The operative part of Judgment is reproduced as under :

"25. As regards supplementary statement, P.W.17 took names of 10 more accused persons from the names he took in the F.I.R., the same can be treated as statement under section 161, Cr.P.C, that can only be used by the accused to contradict the witness. It cannot be used by the prosecution for any purpose. This improvement clearly shows that supplementary statement was made after due consultation and deliberation to falsely involve the accused. This point was examined by this Court in the case of "Falak Sher v. State 1995 SCMR 1350", wherein it has been observed that, "any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it and the involvement of additional accused in such statement was fake improvement which made the basis for other eyewitnesses as well for false implication". The said rule was reiterated in subsequent decision of this

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Court in the case of Khalid Javed v., State 2003 SCMR 1419 and further observed that such witness would be unreliable."

8. As far as accusation or the gravity of the offence is concerned, same is yet to be established by the prosecution after recording its evidence and then trial Court being competent to determine the same. At this juncture, the case against the applicant requires further enquiry within the meaning of subsection (2) of Section 497 Cr.P.C. Consequently, the bail application is hereby allowed. Applicant is ordered to be released on bail subject to his furnishing solvent surety in the sum of Rs.300,000/- and P.R bond in the like amount to the satisfaction of learned trial Court.

9. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.


Judge

M.Y.Panhwar/**