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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st. CrI. Bail Appln. No.S-597 of 2023.

DATE
OF HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

11.12.2023.

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

Mr. Mumtaz Ali Brohi, advocate along with applicants (on bail).

Mr. Ali Anwar Kandhro, Addl. P. G Sindh for the State.

Mr. Suhendar Kumar, advocate along with complainant.

ORDER.

MUHAMAD SALEEM JESSAR-J Through instant bail application, applicants 1.Anwar Ali, 2.Ali Hyder, 3.Munwar Ali, all three sons' of Late Ghulam Hyder Brohi & 4. Muhammad Juman alias Jumo son of Late Meer Muhammad Brohi, seek their admission on pre arrest bail in Crime No.91 of 2023 registered at Police Station Warah, for offences punishable under sections 337-D, A-(i), F-(i), 34, PPC.

2. The applicants preferred their pre-arrest bail application No.1152 of 2023 before the Sessions Judge, Kamber Shahdadkot, where after hearing the parties, learned Sessions Judge, has declined their prayer, through his order dated.14.10.2023, hence this application.

3. Facts are already mentioned in the memo of bail application, therefore, there is no need to repeat the same.

4. Learned counsel for the applicants submits that complainant of this case Ghulam Rasool Brohi is real uncle of the applicants No.1 to 3 and dispute between them is over inherited property as one of the brothers of the applicants No.1 to 3, namely,

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Sikandar Ali, is son-in-law of Ghulam Muhammad, who is real brother of complainant Ghulam Rasool. He further submits due to such landed dispute, this case has been cooked up; however, the applicant Munwar Ali had also got registered FIR No.95/2023 with same Police Station i.e. Warah on 19.10.2023 in which date and offence as has been shown is the same as in this case. He further submits that complainant is also known as nominated accused in that FIR, hence in order to support the son-in-law of Ghulam Muhammad, the complainant has alleged against the applicants so that they may surrender their due share of property left by their deceased father. As far as injury allegedly sustained by complainant party is concerned, the applicant Anwar Ali allegedly caused Danda blow to complainant Ghulam Rasool which hit him at his Ribs. The applicant Munwar Ali caused Danda blow to complainant which landed on his wrist of right hand, whereas, applicant Ali Hyder caused Danda blow to PW Ghulam Serwar, who is brother of complainant and uncle of the applicants on his head which too was declared as *Shajjah Khafifah* and Muhammad Juman alias Jumo has been assigned no role excepting his presence. He further submits that mother of the applicants No.1 to 3 Mst. Gul Khatoon filed F.C Suit No.Nil/2023 before Senior Civil Judge, Warah Re-Gul Khatoon v. Sikandar Ali & others which was disposed of by directing the plaintiff to avail proper remedy before appropriate forum. He, therefore, submits, in view of above long standing enmity between the parties the case against the applicants requires further enquiry, hence prays for grant of bail. In support of his contentions, he places his reliance upon the cases of *Abdul Ghaffar v. The State (PLD 1999 Lahore 277)*, *Zahoor Hussain v. The State (1996 P.Cr.L.J 1671)* & *Dr. Younas v. The State and another (2016 P.Cr.L.J 1743)*.

5. Learned Addl. P. G, appearing for the State submits that since the applicant Anwar Ali has been assigned specific role of causing

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Danda blow to injured complainant at his Rips and the injury allegedly sustained has been declared to be punishable under section 337-D, PPC which carries punishment of ten years, therefore, he has objection to the grant of bail to applicant Anwar Ali, whereas, for remaining applicants, he has no objection.

6. Learned counsel for the complainant assisted by the complainant opposes the application on the ground that the complainant though is applicants' real uncle yet he has no nexus or concern with the land allegedly claimed by the accused. As far as contention for the accused regarding their brother Sikandar Ali who is son-in-law of one Ghulam Muhammad, the brother of the complainant is concerned, learned counsel submits that complainant has no nexus as both are residing separately having their own corridor, therefore, claim of the applicants is not much of consequence. Hence, by dismissing their bail application they may be taken into custody.

7. Heard arguments of learned counsel for the applicants, learned counsel for the complainant and learned Addl. P.G for the State and perused the material available on record with their assistance.

8. Admittedly, the parties are in blood relation to each other, *inter se*; besides dispute over inherited property has not been denied. As far as complainant of this case is concerned, though he allegedly had sustained injury for *Jaifah* and per definition of Section 337-D, PPC it shall be liable to Arsh which shall be one-third of the Diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as Ta'zir.

9. Due to their relationship with each other long standing dispute over the landed property the prosecution cannot be absolved from malice hence the case against the applicants in view of above admitted position of the record requires further probe. In case of Abdul

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Ghaffar (*supra*), learned Bench of Lahore High Court, while deciding the Criminal Miscellaneous Application under section 497(5), Cr.P.C, has observed in following words :

"337-D.—Punishment of Jaifah.—Whoever by doing any act with the intention of causing hurt to a person, or with the knowledge that he is likely to cause hurt to such person, causes Jaifah to such person, shall be liable to Arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as Ta'zir."

Obviously, the primary sentence which is to be awarded to an accused on his conviction is payment of Arsh (equal to 1/3rd of the amount of diyat). The use of the word "may" qua the sentence of imprisonment up to 10 years clearly shows that the sentence of imprisonment is entirely discretionary with the Court. Therefore, on conviction for an offence under section 337-D of the P.P.C. the Court will award the sentence of payment of Arsh and keeping in view the circumstances of a case may or may not award any sentence of imprisonment. The offences falling within the prohibitory clause of section 497 of the Cr.P.C, are those which are punishable with death, imprisonment for life or imprisonment up to 10 years. Meaning thereby that on conviction sentence of imprisonment up to 10 years or life imprisonment or death has to be awarded by the Court. This is not the position qua the offence under section 337-D of the P.P.C. Therefore, in my view, the offence under section 337-D of the P.P.C, though non-bailable does not fall within the prohibition of section 497 of the Cr.P.C."

10. The contention raised by learned Addl. P. G that the applicant Anwar Ali has been assigned severe role of causing hurt is concerned, In this regard it is worth to mention here that in case he may be taken into custody or his bail is declined, tomorrow again he will be granted post arrest bail on principle of consistency. Though applicants have been extended extra ordinary relief in shape of interim

pre arrest bail yet no complaint with regard to misuse of concession extended to them, has been brought on record which may warrant interference by this Court; particularly at this juncture. Furthermore, per role allegedly attributed to applicant Anwar Ali is concerned, he has not repeated the same.

11. Consequently, the bail application is hereby allowed. Interim bail granted to the applicants on 17.10.2023 is hereby confirmed on the same terms and conditions. The applicants present are directed to continue their appearance before the trial Court till final decision of the case.

12. The parties present before the Court are directed to ensure their attendance before the trial Court on forthcoming dates. The trial Court is also directed to expedite the trial within six months. In case, the counsel for the accused or anybody acting on their behalf may seek adjournment on any flimsy ground(s), the trial Court shall be competent to cancel the bail of the applicants without issuing notice to them.

13. 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