

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. Bail Application. No. S- 616 of 2024

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Abdul Qadir Kori Versus

The state

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar Single/D.B.

Date of Hearing: 26/12/2024

Decided on: 26/12/2024

(a) Judgment approved for
Reporting

YES

26/12/2024

NO

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of law / decides a question of law which is of first impression / distinguishes/ over-rules/ overrules/ explains a previous decision. Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is correct.

(iv) Those directions which are not to be used should be deleted.

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

Cr. Bail Appln. No.S- 616 of 2024

Applicant: Abdul Qadir Kori,
through Mr. Sanaullah Gilal, Advocate.

The State: through Mr. Ali Anwar Kandhro, Addl.
Prosecutor General.

Complainant Khalid Hussain Mirbahar,
through Mr. Athar Abbas Solangi,
Advocate.

Date of hearing : 26.12.2024.
Date of Order : 26.12.2024.

ORDER.

Muhammad Saleem Jessar- J. Through this application the applicant Abdul Qadir alias Mallah son of Muhammad Yaqoob, by caste Kori, seeks his admission on pre-arrest bail in Crime No.30/2024, registered at Police Station Waggan, for offence under sections 302, 324, 337-A(i), 337-F(i), 114, 148, 149, 504, 337-H(2), PPC. The applicant filed post arrest bail application vide Cr. Bail Application No.1376/2024 before the Court of learned Sessions Judge, Kamber-Shahdadkot, wherefrom it was assigned to learned 1st Additional Sessions Judge, Kamber, who after due notice and hearing the parties declined the prayer so made vide order dated 03.10.2024. The case has been challaned which is now pending for committal proceedings before Civil Judge & JM/Consumer Protection Court, Kamber.

2. According to the case of prosecution, on 23.04.2024, at 5.00 p.m. time, the applicant along with co-accused Asghar Ali, Nazeer Ali, Tarique, Altaf Hussain, Zakir and one unidentified accomplice, being armed with deadly weapons, to wit gun, KKs, pistols and hatchets, attacked upon the complainant party, committed murder of Mukhtiar Ali, brother of complainant Khalid Hussain Mirbahar and caused injuries to



PW Siraj Ahmed Tunio; hence, such FIR was lodged by the complainant on 25.4.2024.

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3. Learned Counsel for the applicant submits that the role assigned to the applicant is that he caused hatchet blow to injured Siraj Ahmed on his head and the injury allegedly sustained by said injured has been declared by the medicolegal officer to be Shajjah-i-mudihah punishable u/s 337-A(ii), PPC, carrying maximum punishment of 05 years, which does not exceed the limits of prohibitory clause of Section 497, Cr.P.C. He next submits that the role of causing firearm as well as hatchet injuries to deceased is assigned to co-accused Tariq, Asghar Ali and Nazeer and the applicant did not cause any injury to deceased. As far formation of unlawful assembly is concerned, the prosecution has to establish the charge against him after recording evidence and then the trial Court has to determine the accusation against him. At this juncture, according to learned Counsel for the applicant, case against the applicant requires further enquiry, therefore, prays for grant of pre-arrest bail.

4. Learned Additional Prosecutor General opposes the bail application on the ground that the applicant is nominated in the FIR with specific role of causing hatchet injury to injured PW Siraj Ahmed on his vital part. He; however, could not controvert the fact that the injury allegedly attributed to the applicant carries maximum punishment of 05 years and does not fall within prohibitory clause of Section 497, Cr.P.C.

5. Mr. Athar Abbas Solangi, learned Counsel for the complainant, while adopting the arguments of learned Addl. P.G., also opposed the bail application and further added that the applicant is nominated in the FIR with specific role of causing hatchet injury to injured PW Siraj Ahmed on his vital part. He further submits that besides the injury, Section 324, PPC is applied, which carries maximum punishment, therefore, the applicant is not entitled for the bail. However, when confronted with the FIR, the applicant has not been specified whether he had caused sharp or blunt side hatchet blow to injured, Mr. Solangi has no explanation, but even then he insists that the seat of injury shown in the FIR is on vital part. In support of his contentions, he places reliance

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upon the cases reported as *Rab Nawaz and 2 others v. The State (2015 PCr.LJ 1531)* and *Bilal Khan v. The State (2020 SCMR 937)*. 7M

6. Heard learned Counsel for the parties and perused the record.
7. Per FIR, the incident is said to have taken place on 23.04.2024, whereas report whereof was lodged on 25.04.2024 i.e. with the delay of 02 days, though the distance between the police station and place of occurrence is only 7/8 kilometers and no explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution, as during the intervening period it can be presumed that the complainant has made consultation and deliberation to name the culprits in the FIR. The role attributed to the applicant is that he alleged caused hatchet blow which landed on forehead of injured PW Siraj Ahmed; however, the FIR is silent whether he used its sharp or blunt side. Unless the medical evidence is corroborated with ocular version and it could only be possible after recording evidence of the medicolegal officer; hence, at this juncture the role attributed to applicant is under mystery. The applicant had not caused any injury to the deceased. As far as role attributed to him is concerned, in view of unexplained delay in lodgment of FIR with no proper accusation regarding use of weapon coupled with the factum of enmity between the parties over a fishpond, the applicant has made out a good *prima facie* case for his admission on pre-arrest bail. The case law relied upon by learned Counsel for the complainant is distinguishable from the facts and circumstances of the case in hand. In the circumstances and in view of the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of *Khalil Ahmed Soomro & others v. The State (PLD 2017 SC 730)*, case against the applicant requires further enquiry within meaning of sub-section (2) to Section 497, Cr.P.C. Consequently, instant bail application is allowed and the interim pre-arrest bail granted to the applicant on 15.10.2024 is hereby confirmed on same terms and conditions.

JUDGE
26.12.2024.