

3

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appln. No S- 57 of 2024.

Date of hearing	Order with signature of Judge.
-----------------	--------------------------------

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

Applicant (Adam Ali Mazan)	: Through Mr. Akbar Ali Bhangwar, advocate a/w applicant (on bail).
The State	: Through Mr. Ali Anwar Kandho, Addl. P.G.
Complainant (Imuddin Mazan)	: Through Mr. Abdul Faheem Thaheem, advocate a/w complainant.

Date of hearing : 25.03.2024

ORDER

Muhammad Saleem Jessar, J. - Through this application, applicant seeks his admission on pre-arrest bail in Crime No.02 of 2024 of P.S Kashmore, registered for offences under Sections 337-A(ii), 337-F(i), 504, 147, 148, 149, PPC. Applicant filed anticipatory bail application vide Cr. Bail Appln. No.53 of 2024 before the Court of Sessions, which subsequently was assigned to Additional Sessions Judge, Kashmore. After hearing the parties, learned Sessions Judge has turned down his request vide order dated 18.01.2024, hence this application has been maintained.

2. The facts of the prosecution case are mentioned in the memo of bail application; therefore, the same need not to be reproduced herein again.

3. Learned counsel for the applicant submits that the FIR is delayed for about 07 days without plausible explanation. He next submits that the parties are already on strained relations over the landed dispute; besides, the injury alleged sustained by injured Mst. Naaz Khatoon has been declared by the MLO to be falling under Sections 337-A(ii), PPC, which carries maximum punishment of 05 years. He further submits that the applicant is a government servant and

on the fateful day he was on duty. In support of his contention, he has submitted copies of Log Book and Attendance Certificate issued by the Deputy Manager(Civil), CPGCL, GENCO-II, TPS, Guddu under the cover of his statement dated 22.02.2024 and submits that in view of admitted enmity between the parties bail may be granted to the applicant.

4. Learned Addl. P.G. does not oppose the bail application on the ground that the offences with which the applicant stands charged carries maximum punishment of 05 years, therefore, does not exceed the limits of prohibitory clause of Section 497, Cr.P.C; as such, he has no objection.

5. Mr. Abdul Faheem Thaheem, learned Counsel for the complainant, vehemently opposes the application, on the grounds that applicant has been assigned specific role of causing lathi injury to injured PW Mst. Naaz Khatoon; besides, a private faisla was held wherein the applicant was found guilty of the charges, even then he has not fulfilled the conditions imposed by the community people in private faisla; hence, opposes the bail application. In support of his contentions, he places on record a simple copy of faisla dated 25.01.2024 along with photograph showing a Jirga, under the cover of his statement of today's date, taken on record.

6. Heard. Record perused.

7. Admittedly, the FIR is delayed for about 07 days, for which no plausible 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. Though the applicant has been assigned specific role of causing lathi blow to injured Mst. Naaz Khatoon, yet he has also annexed copies of Attendance Certificate and Log Book, showing him on duty on the fateful day. Such documentary evidence is yet to be adjudicated upon by the trial Court whether the applicant on same date was available as alleged or otherwise. The punishment provided by the law for the offences with which he

3

has been charged is not beyond the scope of Prohibitory clause and the being tried by Judicial Magistrate. On conclusion of trial if the prosecut succeed to establish its charge against the applicant, even then punis more than 03 years cannot be visualized. In the circumstances and the dicta laid down by the Apex Court in the case of *Muhammad Tanveer v. The State* (PLD 2017 Supreme Court 733) the case against the applicant requires further enquiry. Moreover the applicant is a government servant, therefore, question of his absconding or tampering with the prosecution evidence does not arise. The admitted enmity between the parties over the landed property is sufficient to believe that the prosecution has been initiated/motivated for ulterior motives and with malafide intention; hence, the basic ingredients for grant of pre-arrest bail, as has been laid down by the Hon'ble Supreme Court of Pakistan in the case of *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427) are fully attracted, as such, there seems no impediment under the law which may come in the way of applicant for grant of pre-arrest bail.

8. Consequently, instant bail application is hereby allowed. Resultantly, the interim pre-arrest bail granted to the applicant on 29.01.2024 is hereby confirmed on same terms and conditions.

9. The observation recorded above are undoubtedly based on tentative assessment of the material placed on record, which shall not influence the trial Court, in any manner, at the time of trial.

has been charged is not beyond the scope of Prohibitory clause and the case is being tried by Judicial Magistrate. On conclusion of trial if the prosecution may succeed to establish its charge against the applicant, even then punishment of more than 03 years cannot be visualized. In the circumstances and in view of the dicta laid down by the Apex Court in the case of *Muhammad Tanveer v. The State* (PLD 2017 Supreme Court 733) the case against the applicant requires further enquiry. Moreover the applicant is a government servant, therefore, question of his absconding or tampering with the prosecution evidence does not arise. The admitted enmity between the parties over the landed property is sufficient to believe that the prosecution has been initiated/motivated for ulterior motives and with malafide intention; hence, the basic ingredients for grant of pre-arrest bail, as has been laid down by the Hon'ble Supreme Court of Pakistan in the case of *Rana Muhammad Arshad v. The State* (PLD 2009 SC 427) are fully attracted, as such, there seems no impediment under the law which may come in the way of applicant for grant of pre-arrest bail.

8. Consequently, instant bail application is hereby allowed. Resultantly, the interim pre-arrest bail granted to the applicant on 29.01.2024 is hereby confirmed on same terms and conditions.

9. The observation recorded above are undoubtedly based on tentative assessment of the material placed on record, which shall not influence the trial Court, in any manner, at the time of trial.


JUDGE

Qazi Tahir/