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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Appln. No.S-58 of 2024.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
<u>28.03.2024.</u>	

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

Mr. Mazher Ali Bhutto, advocate along with applicants (on bail).

Mr. Arif Ali Kalhoro, advocate for the complainant.

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

O R D E R .

MUHAMAD SALEEM JESSAR-J Through instant bail application, applicants Deen Muhammad, Ghulam Abbas, Peer Bakhsh and Dhani Bakhsh, seek pre arrest bail in Crime No.02 of 2024 registered at Police Station Kamber City, for offence punishable under sections 337-A(i), F(v) & 34, PPC.

2. The case has been challaned which is now pending for trial before the Court of Civil Judge/JM-II Kamber, vide Criminal Case No.37/2024, Re-State v. Deen Muhammad and others. The applicants filed anticipatory bail application bearing No.97/2024 before the Court of Sessions, where after hearing the parties, learned Sessions Judge, has declined the prayer so made. Hence instant bail application has been maintained.

3. Since the facts of the prosecution case are already mentioned in the FIR as well as order passed by the Court below therefore there is no need to reproduce the same.

4. Learned counsel for the applicants submits that the applicants are relatives to each other *inter se* and dispute between them

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is over matrimonial affairs which fact has been admitted by the complainant in his FIR. He further submits that prior to this incident the applicant Ghulam Abbas got registered FIR No.48/2022 with Police Station Behram under sections 336, 34, PPC against brothers and cousins of present complainant on 15.11.2022 (Annexure-D page-37). He next submits that said case has also been challaned which is now pending for trial before the Court of Civil Judge/JM-II, Shahdadkot vide Criminal Case No.10/2023 Re-State v. Ameer Jan Magsi and others in which one of the accused Khurshed has been granted bail while remaining are still at large. He further submits that present complainant had also got registered FIR No.42/2023 with PS Rehmatpur under sections 324, 504, PPC, but during investigation said case was found false therefore, it was disposed of by the I.O under false 'B' class; however, later learned Magistrate did not concur his opinion with police report and by taking cognizance directed the I.O to submit list of witnesses which is also pending trial before the Court of 3rd Assistant Sessions Judge, Larkana. Hence submits that by considering the previous litigation between the parties, bail application may be granted.

5. Learned Addl. P. G submits that the applicant Ghulam Abbas has been assigned role of causing butt blow to PW Mst. Zubeda and per memo of injuries as well as Medico Legal Certificate issued by the concerned, no such injury has been shown on her part. Besides, the offence does not exceed the limits of prohibitory clause of section 497, Cr P.C. Hence he has no objection for grant of bail application.

6. Mr. Arif Ali Kalhoro, learned counsel for the complainant opposed the bail application on the ground that the applicants are nominated in the FIR with specific role and mere fact that the offences carry minimum punishment is no ground for bail. In support of his

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6. Mr. Arif Ali Kalhoro, learned counsel for the complainant opposed the bail application on the ground that the applicants are nominated in the FIR with specific role and mere fact that the offences carry minimum punishment is no ground for bail. In support of his

contention, he places his reliance upon the cases of *INTIAZ AHMED and another v. THE STATE (PLD 1997 Supreme Court 545)*, *SHABEER AHMAD alias SHIBLI v. THE STATE (1999 P. Cr.L.J 1348)* & *QURBAN ALI and another v. The STATE (PLD 2014 Sindh 538)*.

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

8. No doubt the applicants are nominated in the FIR with specific role but the allegation leveled against them does not take support from the medical evidence. Besides, the FIR is delayed for about eight days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. Per previous record, the parties are not only relatives to each other but are entangled with each other over matrimonial affairs since long. In backdrop of such standing enmity, the element of mala fide cannot be ruled out. In view of admitted inimical terms between them and coupled with the fact that ocular version has not been corroborated by the medical version the case against the applicants is purely covered by sub-section (2) of Section 497, Cr.P.C. In the circumstances and in view of above factual position on record, the basic ingredients for grant of pre arrest bail as has been laid down by learned apex Court in case of *Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427)* are fully applicable and attracted in this case. The law relied upon by the learned counsel for the complainant in view of dicta laid down by the Hon'ble Supreme Court in cases of *Rana Muhammad Arshad (supra)* and case of *KHALIL AHMED SOOMRO and others v. THE STATE (PLD 2017 Supreme Court 730)*, has no relevancy with the facts and circumstances of present case. The upshot of the above discussion is the applicants have made out a good *prima facie* case for their admission to pre arrest bail.

Consequently, the bail application is hereby allowed. Interim bail granted to the applicants on 29.01.2024 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.

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### Application in D/o Mailed

M.Y.Pashwari/

- ① For orders on MA No. 5702/24 (46-A)
- ② For orders on MA No. 5703/24 (561-A)

- Accountant report as flag 'B'.