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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Application No. S-69 of 2024

Date

Order with signature of Judge

1. For orders on M.A. No.435/2024.
2. For orders on office objection.
3. For orders on M.A. No.426/2024.
4. For hearing of Bail Application.

02.02.2024.

Mr. Khalid Hussain Khoso, Advocate along with Applicant.

1. Granted.
2. Overruled.
3. Granted subject to all just legal exceptions.

4. Through this application, applicant Ghulam Nabi Bijarani without first approaching the Court of first instance i.e. the Court of Sessions, has directly come to this Court seeking his admission on pre-arrest bail in Crime No.02/2024, registered at Police Station Abad, District Jacobabad, for offence under Sections 302, 364, 342, 506/2, 148, 34, PPC. Per learned counsel, the case is under investigation. Learned counsel for the applicant submits that the applicant, who is a police officer serving as Sub-Inspector, has been falsely implicated in this case with malafide intention and ulterior motives so as to malign and disgrace him. He next submits that since the FIR in question has been registered against the applicant in view of report of enquiry conducted by the learned District & Sessions Judge, Jacobabad, therefore, he has not approached the Court of Sessions / first forum. In support of his contentions, he places reliance upon the cases reported in *PLD 2000 Karachi 6*, *2006 PCr.LJ 612*, *PLD 2012 Sindh 212*, *PLD 2009 SC-427* and *2004 SCMR 1167*.

It appears from the record that the subject FIR No.02/2024 was registered against the applicant upon the directions of SSP, Jacobabad and not the learned District & Sessions Judge, Jacobabad. The applicant

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has not expressed apprehension of his intended arrest at the hands of concerned police, but has only shown apprehension that his bail application will not be decided on merits. It hardly provides any justification for not approaching the learned Sessions Judge at the first instance.

It is settled principle of law, that as evolved by the precedent law must not lose sight is that where two Courts have co-extensive or concurrent jurisdiction, then propriety demands that jurisdiction of Court of the low grade is to be invoked in the first instance and opportunity should always be given for exercise of such discretionary jurisdiction to the lower Court first. It is also settled law that one cannot be allowed to bypass and or circumvent ordinary remedy in normal course of the event and High Court does not exercise inherent jurisdiction unless there is a gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of Court or to secure the ends of justice. As far as, inherent jurisdiction as advanced by learned counsel for the applicant, is concerned, jurisdiction under Section 561-A Cr.P.C is neither alternative, nor additional in its nature and is to be rarely invoked only to secure ends of justice so as to seek redressal of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary Courts of criminal procedure. This kind of jurisdiction is extraordinary in nature and it is not to do substantial justice; it is neither akin to appellate nor the revisional jurisdiction. It is now well entrenched legal position that where a power is co-extensive with two or more Courts, in ordinary circumstances, propriety of law demands that the litigant must first seek remedy in the Court of lowest jurisdiction.

I have examined the cases, relied upon by learned counsel for the applicant and find that facts of the same are distinguishable.

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Consequently, upshot of above discussion is that no direct pre-arrest bail can be granted more particularly when the alternate remedy is available. Accordingly and in view of above, by treating this application into an application for protective bail, applicant is admitted to protective bail for a period of seven (07) days from today, subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. Bond in the like amount to the satisfaction of Additional Registrar of this Court, thereby enabling the applicant to approach the learned Sessions Judge concerned at the first instance and then, who, if approached, shall decide the pre-arrest bail application of the applicant independently and purely on merits of the case, without being prejudiced by the findings expressed by him in the enquiry previously conducted by him.

This order shall cease to have its effect on 08.02.2024, or whenever the applicant approaches / surrenders before the concerned Court, whichever is earlier.


JUDGE