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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
CrI. Bail Appln. No.8-12 of 2019.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For Hearing of bail application.

08.03.2019

Mr. Safdar Ali Ghouri, advocate for the applicant.

Mr. Sharafuddin Kanher, A.P.G.

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Muhammad Saleem Jessar, J. Through instant bail application, applicant Manzoor Ahmed son of Noor Hassan, seeks his release on post arrest bail in Crime No.02/2018 registered at Police Station Ghora Ghat (District Kashmir @ Kanhdkot), for offence punishable under sections 302, 337-A(i), 337-F(i), 147, 148, 504, PPC.

2. The bail application bearing CrI. B.A.No.637 of 2018 moved by the applicant before the trial Court has been declined by means of order dated 27.10.2018.

3. The crux of prosecution case as unfolded in the FIR by the complainant Muhammad Ali are that on fateful day he along with his father Shakal aged about sixty years, cousins Mashooque Ali and Muhammad Ismail were standing near the Otaq of Badal Khan Sabzoi, when at about 07:30 (evening) they saw and identified accused each one 1.Nooruddin, 2.Nazir Ahmed, 3.Manzoor Ahmed (present applicant), 4.Inam, 5.Faqeer Muhammad, 6.Liaquat Ali, 7. Paharuddin, 8.Muhammad Ali, 9.Khadim & 10.Noor Sahab, all by caste Sabzoi and two unknown culprits all having lathies in their hand came. Out of them, accused Nooruddin by hurling abuses said that they have insulted them upon the issue of path thereby have insulted them hence they would get revenge and by saying so, accused Nooruddin caused lathi blow on his father Shakal which landed on his left side of skull, accused Nooruddin repeated below on his father Shakal which landed

at his left arm, accused Nazir Ahmed also caused lathi blow on his father Shakal which landed on back side of waist, while accused Manzoor Ahmed (present applicant) caused lathi blow to complainant which landed on his head. Accused Muhammad Ali also caused lathi blow which landed on his left arm. Accused Inam caused lathi blow on his cousin which hit on his head. Accused Paharuddin caused lathi blow to his cousin Mashooque Ali which also hit him on his left side of head and then all the accused had allegedly caused joint blows to them. They made hue and cry which attracted to co-villagers and the accused while seeing coming them decamped from the scene of offence towards southern side. Later the complainant made necessary arrangement for transport and shifted the injured to Police Station and after obtaining letter for treatment brought them at Taluka Hospital Kandhkot, wherefrom injured his father Shakal and cousin Mashooque Ali were referred towards Sukkur Hospital where on 23.06.2018 at about 0300 hours of the morning his father succumbed to his injuries and died. After completion of burial ceremony, complainant appeared at Police Station and lodged the report in terms as stated above.

4. After registration of the case, investigation was carried out and the applicant has been shown to have been arrested by the police on 25.06.2018 and while police failed to arrest any other accused and therefore due to time constraint and completion of stipulated period filed charge-sheet before the competent Court of law having jurisdiction on 10.08.2018 placing the name of other accused as absconding. The case is now pending for trial before the Court of Ist. Additional Sessions Judge, Kandhkot vide Sessions Case No.272/2018 (Re: State v. Manzoor Ahmed and others.

5. Mr. Safdar Ali Ghouri, learned counsel for the applicant submits that role attributed to the applicant is that he allegedly caused lathi blow to complainant which landed on his head but the injuries allegedly sustained by him have been declared by the Medicolegal

Officer as Shajjah-i-Khafifah falling under section 337-A(i), PPC, which is bailable. He further submits that role of causing injuries to deceased as well as other P.Ws is assigned to co-accused and those accused persons have not been arrested by the police. He; therefore, prays that the case against the applicant requires further enquiry as contemplated under sub-section (2) of Section 497, Cr.P.C.

6. Conversely, Mr. Sharafuddin Kanher, learned A.P.G opposes the bail application on the ground that the applicant is nominated in the FIR with specific role of causing injury to complainant. He; however, does not controvert the fact that the injury sustained by the complainant has been declared by the Medicolegal Officer is bailable. Even per FIR as well as challan the police have not added Section 324, PPC which may bring the injuries allegedly attributed to the applicant within the meaning of prohibitory clause of Section 497, Cr.P.C.

7. The complainant who was present in Court on the last date of hearing claimed copy of memo of bail application which was handed over to him, however, today he chosen to remain absent.

8. I have heard learned counsel for the applicant, learned A.P.G and have gone through the material made available before me on record.

9. Admittedly the parties are already on strained relations over the issue of path and therefore false implication of the applicant cannot be ruled out, besides the FIR is delayed for about two days for which no plausible explanation has been furnished by the complainant though as per version after shifting the injured from place of incident the complainant obtained letter from concerned Police Station yet he did not get his case registered, thus the delay whatsoever was occasioned on his part is unexplained. Moreover the injury allegedly sustained to complainant and attributed to present applicant is bailable. As far as vicarious liability is concerned, same is to be

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determined by the trial Court after recording evidence of the parties. In the aforesaid circumstances, I am of the considered view that the case against the applicant requires further enquiry within the meaning of Section 497(2), Cr.P.C. Accordingly, instant bail application is allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees. One lac only) and P.R bond in the like amount to the satisfaction of trial Court.

Judge

M.Y.Panhwar**