

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Amjad Ali Sahito**

Criminal Bail Application No.343 of 2020

Applicant : Malik Adnan S/o Malik Muhammad  
Ishaq  
Through Aamir Rizwan Yousufzai,  
Advocate

Complainant : Muhammad Ashraf S/o Haji Abdul  
Mobin  
Through Mr. Muhammad Yousuf,  
Advocate

Respondent The State  
Through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General, Sindh.

Date of hearing : 13.08.2020

Date of order : 13.08.2020

## **ORDER**

**AMJAD ALI SAHITO, J** -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.107/2020 registered under Sections 337-A(i)/337-A(iii) PPC at PS Baghdadi, after his bail plea has been declined by IInd Additional Sessions Judge, Karachi South vide order dated 04.03.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that the complainant is a police official, who involved the applicant/accused with malafide

intentions; that it is impossible how a private person can beat a police official; that eye-witness Fazar Rabi is habitual offender and most of the time, he quarrels with Mohalla people and a complaint has also been filed against him by BB Maai Meran Dargah Committee; that the medical certificate obtained by the complainant is a false one and same has been challenged before the competent authority. He lastly prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant as well as learned DPG have vehemently opposed for confirmation of bail on the ground that name of the applicant is mentioned in the FIR with specific role; that the medical certificated issued by the medical officer falls within the prohibitory clause.

5. I have heard the learned counsel for the parties and have gone through the material available on record. It is an admitted position that name of the applicant/accused finds place in the FIR with specific role that on the day of incident, he has beaten the complainant which caused injury on his neck and other parts of the body. Thereafter, the complainant was referred to the hospital for treatment and as per medical officer, injury is *Shajjah-i-Hashima* which falls under section 337-A(iii) PPC punishable upto ten years; hence, ocular evidence finds corroboration with the medical evidence. Further, 161 Cr.P.C., statement of the PWs is also supporting the version of the complainant. Prima facie sufficient material is available on record to connect the applicant with commission of the alleged offence. At bail stage, only tentative assessment is to be made and deeper appreciation of evidence is not required, prima facie sufficient material is available on the record to connect the applicant/accused with the alleged offence.

6. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

7. In view of the above, the applicant has failed to bring his case for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicant/accused vide order dated 04.02.2020 is hereby recalled and the bail application is **dismissed**.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA