

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1113 of 2020

Applicant : Nadir Ali S/o Koru Khan
Through Mr. Habibullah Bin M.
Suleman, Advocate

Complainant : Abdul Baki S/o Abdul Qudoos
Through Mr. Muhammad Asghar
Tareen, Advocate

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

Date of hearing : 23.09.2020

Date of order : 23.09.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.213/2020 registered under Sections 392/34 PPC at PS Gulshan-e-Maymar, after his bail plea has been declined by VIth Additional District & Sessions Judge, Karachi West vide order dated 14.07.2020.

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 has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case; that on the statement of co-accused, the applicant has been booked in this case, which is inadmissible in accordance with law; that due to religious dispute, complainant has implicated the applicant/accused malafidely with ulterior motives. He has lastly prayed for confirmation of bail. In support of his contention, he has relied upon the cases of (1) Altaf-ur-Rehman v. State (PLJ 2018 Cr.C. (Lahore)485, (2) Mst. Shamim Khatoon v. Syed

Shafique Ahmed and 4 others (2018 PCr.LJ 650), (3) Rana Khurram Shehzad and another v. The State and another (2018 MLD 830), (4) Nazir Ahmad and 2 others v. State and another (PLJ 2018 Cr.C. 694) and (5) Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427) and (6) Bashir Ahmed v. The State (PLD 2008 Karachi 215).

4. On the other hand, learned counsel for the complainant as well as learned APG have vehemently opposed for grant of bail to the applicant/accused on the ground that no malafide or enmity has been pointed out by the applicant to believe that he has been falsely implicated in this case; that the complainant has not given any name but subsequently after the arrest of main accused namely Zafarullah, police has arrested him.

5. I have heard the learned counsel for the parties and have gone through the material available on record. It reveals that on the day of incident, the complainant was robbed cash Rs.1500/-, Nokia Mobile Phone, key of the car, driving license, ATM Card and cheque of Rs.200,000/-. On the very next day, he was present at the same place where he has identified two persons, who robbed his valuable articles and on his pointation, police has arrested one Zafarullah and recovered CNIC, mobile phone and pursue of the complainant, on inquiry he disclosed the name of present applicant/accused as who was accompanied with him at the time of commission of offence. Thereafter, the complainant lodged the instant FIR. Further, learned counsel for the applicant has failed to point out any ill-will, enmity or *mala fide* on the part of the Complainant or investigating officer to believe that he has been falsely implicated in this case. At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. Prima facie, sufficient material is available on record to connect the applicants/accused with the 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. Because of the above, learned counsel for the applicant has failed to make out a case for grant of pre-arrest bail in view of subsection (2) of Section 497 Cr.P.C. Accordingly, the instant Bail Application is **dismissed**. The interim pre-arrest bail granted to them vide order dated 28.07.2020 is hereby **recalled**.

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