

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1227 of 2020

Applicant : Muhammad Rizwan S/o Muhammad Rafiq
Through Mr. Z.K. Arif, Advocate

Complainant : Muhammad Bilal S/o Muhammad Arif
Through Mr. M. Jahangir Khan

Respondent : The State
Through Mr. Talib Ali Memon, Assitant
Prosecutor General, Sindh

Date of hearing : 09.09.2020

Date of order : 09.09.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, the applicant/accused seeks pre-arrest bail in Crime No.648/2020 registered under Sections 337A(iv)/337-L(ii) PPC at PS Kharadar, after his bail plea has been declined by learned District & Sessions Judge, Karachi South vide order dated 11.08.2020.

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 submits that applicant/accused is innocent and has falsely been implicated in this case; that prior to this, the application was moved by the complainant for illegal detention of the minor, who was handed over to the wife of the complainant; that the applicant/accused has lodged the counter FIR against the complainant being Crime No.681/2020; hence, it is yet to be decided who was aggressive and who was aggressor; that the challan has been submitted and the applicant/accused is no more required for further investigation. He has relied upon the case laws of Syed Darbar Ali Shah and others v. The State

(2015 SCMR 879) and Hamza Ali Hamza and others v. The State (2010 SCMR 1219) and prayed for confirmation of bail to the applicant/accused.

4. On the other hand, learned counsel for the complainant as well as learned APG have vehemently opposed for confirmation of bail on the ground that counter FIR by the applicant/accused is totally violation of the case, which was lodged after 19 days without any plausible explanation; that the complainant has handed over the custody of the minor; hence, question of enmity does not arise.

5. I have heard the learned counsel for the parties and perused the material available on record. Admittedly, the name of the applicant/accused is transpired in the FIR with specific role that on the day of incident, he has pushed the complainant resultantly, he fell down and was shifted to hospital and after obtaining the medical certificate, he has lodged the instant FIR. As per medical report, the injury was declared by the doctor as Shajfah-i-munaqqilah which is punishable for 10 years and falls within the prohibitory clause.

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. 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 implicating in the case.

7. Further, 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 applicant/accused with the offence.

8. In view 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 the applicant/accused vide order dated 17.08.2020 is hereby **recalled**.

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

JUDGE

Kamran/PA