

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1685 of 2020

Date

Order with signature of Judge

For hearing of Bail Application.

08.09.2021

Mr. Raheel Ali Bhatti, Advocate along with Applicant (on bail).
Syed Meeral Shah, Addl. Prosecutor General, Sindh along with SIP
Shakeel Mehmood of P.S Peerabad, Karachi.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Habibullah seeks his admission on pre-arrest bail in Crime No.196/2020 of Police Station Peerabad, Karachi, under Sections 147/148/149/324/302 PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 12.09.2020, hence this bail application.

2. SIP/IO Shakeel Mehmood of P.S Peerabad, Karachi, is present and files certain documents as well as statement, same are hereby taken on record. The complainant, as per statement of the I.O, has proceeded to Baluchistan. I.O of the case is present and submits that since he has made compliance of Court's order, therefore, show-cause notice issued to him, may be vacated, learned Addl. P.G, Sindh has no objection. Order accordingly.

3. The crux of the prosecution case as unfolded by the complainant in his FIR are that accused Habibullah got married with sister of the applicant namely Mst. Zohra Bibi after enticing her some 12 years back and after 06 months of the marriage he divorced her, which resulted into enmity. On 07.06.2020 complainant together with his brother and mother was present in his house when accused Habibullah, Hakeemullah, Rehmatullah, Zafarullah and their cousin Muzafar, Abdul Kareem, Gogi and some unknown persons duly armed with hatchets as well as lathies, entered forcibly into the house with intention to commit Qatl-i-Amd. It is alleged that all the accused caused lathi as well as hatchet blows to them, aiming to commit their Qatl-i-Amd. Accused Habibullah caused hatchet blow with intention to commit Qatl-i-Amd to sister of applicant Mst. Zohra Bibi, which

landed on her head who after receiving severe injury fell down. Later, she was shifted to Abbasi Shaheed Hospital where she succumbed to the injury(ies) during treatment. To such effect, present FIR was lodged.

4. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated by the complainant party on the ground of clash between them over abduction of sister of the complainant. He further submits that in fact complainant party had assaulted upon accused as well as others on 05.03.2020 in which applicant sustained multiple injuries on his person. He further submits that FIR bearing No.67/2020 of P.S Peerabad, Karahci, was registered under Section 324/34/337-H(ii) PPC, in which present complainant is an absconder. He further submits that applicant, at the time of present incident, was not available; however, he does not submit any documentary evidence which may show that applicant at the time of incident was not available at the place of incident. He further submits that there is dispute between accused and complainant party over matrimonial affairs, which makes the case of applicant being of further inquiry. Hence, he prays for confirmation of the bail.

5. On the other hand, learned Addl. P.G, Sindh appearing for the State, submits that as per FIR applicant allegedly caused hatchet blow to sister of the complainant namely Mst. Zohra Bibi (the deceased) with hatchets on her head. He, therefore, submits that specific role of causing sharp side hatchet blow to deceased, is assigned to him and no *mala fide* has been brought on record to show that complainant party had any ill-will or malice against the accused. Learned Addl. P.G, Sindh points out that applicant abducted the complainant's sister Mst. Zohra Bibi and when she refused to accompany with him he became annoyed and caused her murder. He further submits that the offence with which applicant stands charged, carries capital punishment in which bail cannot be granted easily; hence, opposes the bail application. In support of his contention, learned Addl. P.G, Sindh places reliance upon case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*.

6. **Heard arguments and perused record.** Admittedly, the applicant is nominated in FIR with specific role of causing hatchet blow to deceased Mst. Zohra Bibi, which landed on her head and resulted into her death.

The offence with which the applicant stands charged, carries capital punishment, therefore, he is not entitled for concession of bail particularly extraordinary relief in shape of pre-arrest bail. No *mala fide* on the part of prosecution has been alleged. Mere fact that complainant of this case is absconding in the FIR lodged by brother of applicant, is no ground for granting extraordinary relief to accused who has been assigned specific role of causing Qatl-i-Amd of an innocent woman, and the offence alleged against the applicant carries capital punishment. Moreover, the basic ingredients for grant of pre-arrest bail are not attracted as enshrined by the Hon'ble Supreme Court of Pakistan in numerous judgments, in recent past in the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129), wherein it has been stipulated as under:-

"2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner 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 investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least."

7. It is settled law that bail in non-bailable offence has always been considered by the Courts where case for bail is made out. While considering the bail matter of an accused person involved in a non-bailable offence, if there appear reasonable grounds for believing that he is guilty of an offence punishable with death or imprisonment for life, he shall not be released on bail, until and unless the case is covered by any of the provisions in subsection (1) of Section 497, Cr.P.C. In case, the bail is to be granted to every accused, even if he is charged with a non-bailable offence, without considering the merits of the case, merely on the plea that every accused is presumed to be innocent unless proved otherwise, the very concept and

purpose of drawing a line betweenailable and non-ailable offences and various kinds of punishments, as prescribed by the law, shall stand frustrated. The discretion vested in the Courts is to be exercised in a judicial fashion and in the light of the facts of each case. Where the prosecution collects enough material to constitute reasonable grounds connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail. In the present case, since no *mala fide* on part of the complainant has been shown by the applicant side, therefore, the relief of pre-arrest bail sought by the applicant, against whom the allegation is of committing murder of an innocent woman, cannot be acceded to.

8. In view of above circumstances, I am of the considered opinion that applicant has failed to make out his case for grant of pre-arrest bail, therefore, instant bail application is hereby dismissed; interim pre-arrest granted earlier to applicant on 11.11.2020 is hereby recalled. Since the case has been challaned, therefore, applicant present, is directed to surrender before the trial Court to face the trial. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned as well as SHO, P.S concerned, for compliance.

JUDGE

Zulfiqar/P.A