

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1554 of 2020

Date

Order with signature of Judge

For hearing of Bail Application.

26.02.2021

Syed Nadeem-ul-Haq, Advocate along with Applicants (on bail).
Mr. Riasat Ali, D.P.P for the State.
Mr. Attaullah Abbasi, Advocate for the Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants (i) Afzal Zaman Khan and (ii) Ghulam Hussain, seek their admission on pre-arrest bail in Crime No.349/2019 of Police Station Nazimabad, Karachi, under Section 385/506-B/34 PPC. The bail plea preferred by the applicants before first forum was declined by means of order dated 06.10.2020, hence this bail application.

2. The facts of the prosecution case as unfolded by complainant in his FIR dated 19.12.2019 are that on 08.12.2019 a phone call was made by accused Afzal Zaman Khan with directions to complainant to reach at their estate agency available in Paposh Nagar, Karachi. Pursuant to said call, the complainant went there where accused Afzal Zaman Khan and his sons Farukh Afzal and Mobeen @ Kaka were present, who by showing deadly weapons asked the complainant to pay Rs.500,000/- as ransom/bhata, else he will be done away with, in case of default they will cause bodily damage to him and his family. On 19.12.2019 a phone call was received by the complainant from culprits to pay bhata immediately else they will kill him. On query, complainant was directed by culprits to bring their bhata at Ahab Sweets. The complainant after making arrangement of Rs.100,000/- proceeded towards given place; however, in the meanwhile, at about 2150 hours at near Noor Islam Chowk within jurisdiction of P.S Nazimabad, Karachi, complainant narrated facts to one HC Tufail Ahmed of P.S Nazimabad, who was on patrolling. HC Tufail Ahmed deployed his subordinates in civil dresses with directions to remain alert around Ahab Sweets. The complainant reached at the given place and the police personnel duly dressed in civil uniform were also watching him carefully.

It is alleged that at about 2215 hours two culprits came the pointed place and made demand of bhata amount, to whom complainant paid Rs.100,000/-. The amount was in shape of currency notes / denomination notes of Rs.5000/- each, total 20 in number. Meanwhile, police personnel available around the place of incident, with the help of HC Tufail Ahmed arrived there and captured the culprits along with bhata amount. On inquiry, they disclosed their names to be Afzal Zaman Khan son of Hassan Zaman Khan and Ghulam Hussain son of Kalan. The said bhata was recovered from the pocket of accused Afzal Zaman Khan and then both accused were arrested along with bhata amount on spot. Later, instant FIR was lodged by the complainant at 11:30 P.M, which subsequently was assigned to Inspector Shakeel Ahmed of SIU/CIA Karachi for investigation, who, in order to defeat the case of complainant and favouring the accused, disposed of the FIR under "B" class. However, at the time of scrutiny of the police papers, it was returned by the SPP ATC Court concerned. Later, investigation was assigned to another I.O, who submitted charge sheet before the Administrative Judge, ATC Karachi where the accused filed anticipatory bail application and were granted ad-interim pre-arrest bail. Meanwhile, learned Judge, ATC Court No.VIII, Karachi after perusal of record opined that instant case was not triable by the Court of ATA, therefore, transferred the case papers to the Court of learned Sessions Judge, Karachi (Central) for disposal according to law. The accused filed anticipatory bail application No.1644/2020 before the Court of Sessions wherefrom it was assigned to 7th Additional Sessions Judge/MCTC-II, who after hearing to parties, declined their bail application by order dated 06.10.2020; hence, this bail application.

3. Learned counsel submits that FIR is delayed for about 11 days and the FIR was disposed of under "B" class; besides, co-accused Mubeen has been released by the I.O; hence, case against applicants requires further inquiry and submits that by granting instant application, they may be admitted to pre-arrest bail.

4. Learned D.P.P for the State submits that accused are nominated in the FIR with specific role of making demand of bhata amount and subsequently it was paid to them and they were found in possession of said amount; hence, they are not entitled for anticipatory bail. He further

submits that bhata amount is not meager one, which was recovered from the pocket of accused Afzal Zaman Khan; besides; parameters for grant of pre-arrest bail as well as post arrest bail are very much different; hence, accused in view of above factual position are not entitled for grant of pre-arrest bail. On query being asked by the Court, learned D.P.P admits that no legal action or enquiry has been initiated by the department against its I.O/Inspector Shakeel Ahmed of SIU/CIA, Karachi.

5. Learned counsel for the complainant by adopting arguments advanced by learned D.P.P for the State, also opposes the bail application. He submits that huge amount of bhata viz. Rs.100,000/- was paid by the complainant to accused Azal Zaman Khan and subsequently it was recovered from him on the spot, therefore, question of mistaken identity or false implication of accused does not arise; besides, the offence involved in this case carries maximum punishment of ten years, which exceeds limits of prohibitory clause of section 497 Cr.P.C.

6. **Heard arguments and perused record.** The argument advanced by learned counsel for the applicants to the effect that FIR is delayed for about 11 days, carries no weight on the pretext that accused had called him at their respective estate agency on 08.12.2019 and directed him to pay Rs.500,000/- and again on 19.12.2019 the complainant received a call from the culprits to pay bhata amount to them immediately on 19.12.2019. On 19.12.2019 when complainant after making arrangement of Rs.100,000/- went to pay bhata to them on very same date, the police arrived and arrested the applicant along with said bhata amount. The recovery of bhata amount from pocket of accused Afzal Zaman Khan has not been denied; beside, no malafide has been alleged against the complainant for implicating them falsely. The section 386 PPC being applied in the case carries punishment of 10 years, which does fall within the limits of prohibitory clause of section 497 Cr.P.C. No malafide or animosity has been alleged on the part of complainant or the police. The ingredients of offence committed by the accused are of very serious nature and infact deteriorate the society particularly when bhata is demanded from the people having good behaviour as well as reputation in that society. The demand of bhata is very serious act and such act being played by any of the accused can be curtailed by taking fruitful steps against them,

therefore, under these circumstances, the bail plea of the accused cannot be acceded to as admittedly the accused were arrested on spot along with bhata amount and the FIR was lodged promptly on same date. Further, the basic ingredients for grant of pre-arrest bail as enshrined by the Honourable Supreme Court of Pakistan in case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*, are lacking in this case, therefore, no case for anticipatory bail is made out. Consequently, instant bail application is hereby dismissed. Applicants present, are directed to surrender before the trial Court and proceed with the trial.

7. Needless to mention here that the observations made hereinabove are tentative in nature and may not prejudice the case of either side at trial before the trial court.

8. Let copy of this order be communicated to learned trial Court as well as SHO, P.S concerned, through SSP concerned, for compliance.

JUDGE

Zulfiqar/P.A