

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.**

Cr. Bail Application No.S-683 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.
For hearing of main case.

01-11-2021

Applicant Ali Bahadur is present on interim pre-arrest bail granted to him by this Court vide order dated 23.08.2021.

Mr. Muhammad Nawaz B. Jamali, Advocate for applicant.

Mr. Abdul Hameed Bajwa, Advocate along with complainant.

Ms. Safa Hisbani, Asst. Prosecutor General, Sindh.

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ADNAN-UL-KARIM MEMON, J: - Through instant bail application, the Applicant seeks his admission on pre-arrest bail in Crime No.220 of 2021, registered at Police Station Badin under section 337-F(v), 337-A(i), 509, 504, 34 PPC.

2. The accusation against the applicant is that of causing injuries to the complainant party, however, the complainant kept waiting and lodged the F.I.R on 26.07.2021, whereas, the alleged offense took place on 11.07.2021.

3. The learned trial Court granted ad-interim pre-arrest bail to the applicant on 30.07.2021 and subsequently recalled vide order dated 05.07.2021 with the observations that there was/is no malafide on party of the prosecution to book the applicant in the instant crime.

4. Today, the complainant present in Court has filed an affidavit to the effect that he has forgiven the applicant in the name of Almighty Allah and he has no objection if the ad-interim bail granted to the applicant is confirmed. This trend to take somersault and give a statement that is different from the prosecution case; and, file an affidavit at the stage of hearing of bail application creates doubt in the prosecution case to enable the accused to get the bail has been deprecated by the Honorable Supreme Court from time to time.

5. I have heard the arguments of learned Counsel for the Applicant and learned APG, who opposed the grant of Bail to the

applicant by narrating the aforesaid factual as well as legal aspect of the case. However, concedes the factual position of the case to the effect that the applicant has patched up with the complainant and relied upon his affidavit placed on record.

6. The Honorable Supreme Court in the recent judgment in pre-arrest bail matters has held that judicial protection is based on equity and cannot be extended in every run-of-the-mill criminal case founded upon incriminatory evidence, warranting custody for investigative purposes. Primarily, the remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of the Honorable Supreme Court rendered in the case of Gulshan Ali Solanqi and others v. The State through P.G. Sindh (2020 SCMR 249)

7. On merits, tentative assessment of record prima facie show the case of the applicant falls within the ambit of Section 337-A(i) 337-F(V) PPC which offenses are punishable for three to five years; besides that there is delay in lodging of FIR. The final Medico-Legal Certificate of injured Mst. Saran was issued 17.7.2021 whereas, the alleged offense took place on 11.7.2021. The complainant has also narrated a different version of the incident through affidavit and stated that he has no objection if the interim pre-arrest bail granted to the applicant is confirmed. Prima-facie malafide intention of prosecution could not be ruled out at this stage, however, it is for the trial court to ascertain this aspect of the case at the time of trial. I am of the tentative view that the case of the applicant does fall within the ambit of "further inquiry" falling within the ambit of section 497(2) Cr. P.C.

8. For the above reasons, the applicant Ali Bahadur has made out a case for pre-arrest bail in FIR No. 220 of 2021, registered at Police Station Badin under section 337-F(v), 337-A(i), 509, 504, 34 PPC.

9. The interim bail granted to the applicant vide order dated 23.08.2021 is hereby confirmed on the same terms and conditions. The applicant is directed to appear before the trial court to face the trial without fail. However, in case the applicant fails to appear, the trial Court shall be at liberty to cancel his bail without making any reference to this Court.

10. Needless to mention here that, observations made in this order are tentative in nature, and shall not affect the merits of the case.

JUDGE

Hafiz Fahad