

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2327 of 2021

Riaz Ahmed Dahri,  
applicant through:

Mr. Huzoor Bakhsh Ujjan, advocate

The State,  
through:

Mr. Faheem Hussain Panwhar, DPG

Mst. Rukhsana,  
complainant through:

Mr. Siraj Ahmed Mangi, advocate

**Date of hearing:**

**29.12.2021**

**Date of order:**

**07.1.2022**

## ORDER

**Adnan-ul-Karim Memon, J.** – Applicant Riaz Ahmed Dahri son of Haji Noor Muhammad Dahri has earlier been admitted to ad-interim pre-arrest bail by this Court vide order dated 06.12.2021. Applicant has been booked in Crime No.1582/2021, Police Station Gulistan-e-Jauhar, Karachi, registered under Sections 448/412/354/506-B/337-A (I), 427/34 PPC.

2. In a nutshell, the prosecution story as is unfolded in the FIR is that the complainant has one plot bearing No.B-25, Block-10, Gulistan-e-Jauhar Karachi, admeasuring 400 square yards, which she purchased five years ago from Dr. Mukhtar Ahmed Bhutto and she also hired two watchmen to look after. She says that from time to time she visited the said plot and one person who is known to the complainant used to park his vehicle inside the plot along with some equipment. Per complainant, on 31.10.2021, at about 2330 hours, her watchman namely Fayyaz called her and disclosed that six unknown persons forcibly entered the house and misbehaved with him, maltreated him as well as to women folk and caused damaged to the vehicle, besides they also issued threats of dire consequences. On this information, complainant reached and saw that Riaz Ahmed Dahri (applicant) along with his accomplices was present there; complainant told him that she is the owner of the plot, upon which the applicant extended threats of killing to the complainant, thereafter she called on 15 and registered the instant FIR.

3. Mr. Huzoor Bakhsh Ujjan, advocate, representing the applicant contended that the applicant / accused is quite innocent and has been falsely implicated in the present case with malafide intention and ulterior motives; that there is a previous civil dispute between the parties, the complainant already moved an application to the concerned SHO that some land grabbers are trying to illegally occupy his plot and are also issuing threats to him; that the complainant was not present at the time

of the alleged incident and the FIR was lodged after a delay of seven days without any explanation. It is further submitted that all the allegations against the applicant are false and fabricated and the complainant falsely implicated the applicant in the alleged crime, the applicant is neither a hardened criminal nor has any previous criminal record. Per learned counsel, the ad-interim pre-arrest bail earlier granted to the applicant may be confirmed on the same terms and conditions.

4. Mr. Siraj Ahmed learned counsel for the complainant has opposed the bail application for the reason that the accused along with other culprits has tried to occupy the plot of the complainant and subsequently also forcibly ousted the complainant's *chowkidar* from the property; that the applicant is nominated in the FIR, he is a habitual criminal and is also previously convicted in Criminal Case No.561 of 2020 arisen out of FIR No.106/2020 for offenses under Section 23(1) (a) of the Sindh Arms Act, 2013 registered at PS Sachal Karachi. He pointed out that the contention of the learned counsel for the applicant that the applicant has no previous criminal record is a false statement. Learned counsel lastly argued that the ad-interim pre-arrest bail may be recalled. In support of his contention, he relied upon his statement dated 29.12.2021 submitted before this Court and argued that the applicant is also involved in so many cases previously, thus not entitled to the concession of pre-arrest bail. To this, learned counsel for the applicant has refuted the claim of the complainant and submitted that there is nothing on record to suggest as to whether the conviction of the applicant is still holding the field.

5. Learned DPG representing the State has adopted the arguments advanced by learned counsel for the complainant and further argued that the name of the applicant is mentioned in the FIR and he is a previously convicted person, therefore, he is not entitled to bail. Per learned DPG, the ad-interim pre-arrest bail earlier granted to the applicant is liable to be recalled.

6. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record.

7. It appears from the record that the allegation against the applicant is that he trespassed the plot of the complainant and forcibly thrown out her *Chowkidar* from the subject premises, maltreated him as well as his family, and issued threats of dire consequences to the complainant. Prima facie, the applicant is nominated in the FIR with a specific role; besides that the applicant has a previous criminal record and he has also been convicted in Sessions Case No.561/2020 (Re- The State versus Riaz Ahmed son of Noor Muhammad) arising out of FIR No.106/2020 under Section 23(I)(a) of the Sindh Arms Act, 2013 of PS Sachal Karachi. Certified copy of the judgment dated 07.11.2020 passed by learned IV-Assistant Sessions Judge Malir Karachi has been placed on record by the complainant through his statement dated

29.12.2021. Mere lesser punishment of the offense is no ground to grant extraordinary relief to the applicant who has already been indulged in such sort of activities as discussed supra, thus the applicant has failed to make out a case for grant of relief as provided under Section 498 Cr.P.C.

8. In principle this Court considering a bail application has to tentatively look to the facts and circumstances of the case. To ascertain whether reasonable grounds exist or not, the Court, should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused which if left, unrebutted, may lead to the inference of guilt. The mere accusation of a non-bailable offense would not be sufficient to disentitle an accused from being bailed out. There should be reasonable grounds as distinguished from the mere allegation of suspicion. However, strong the suspicion may be, it would not take the place of a reasonable ground. The words "reasonable grounds" are words of higher import and significance than the word "suspicion". It is for the prosecution to show reasonable grounds to believe that the accused has committed the crime. If the Court is not satisfied with the material placed before it that there exist reasonable grounds to believe that the accused is guilty, and then the Court has the discretion to grant bail. The Honorable Supreme Court in the case of *Sikandar A. Karim. Vs. the State* (1995 SCMR 387) has settled the principles of the grant of bail.

9. The basic point that needs to be considered for grant of bail is whether there are reasonable grounds for believing that the accused has committed the offense; nature and gravity of the charge; severity of punishment in case of conviction; apprehension of abscondence, when released on bail; the character, the means and the standing of the accused; the danger of witnesses being tampered with; the opportunity to the accused to prepare his defense; the period for which the accused has been in jail and when the trial is likely to conclude; and, whether the accused is named in the FIR or his description is given in it; that time is taken in lodging the FIR; and whether prompt; and whether the accused is a previous convict; and, whether the reasonable possibility of false implication of the accused cannot be ruled out.

10. A five-member larger Bench of the Hon'ble Supreme Court once again examined the scope of Section 498 Cr.P.C., in *Muhammad Ayub v. Muhammad Yaqub and another* (PLD 1966 SC 1003). The majority held that Section 498 has two limitations: first, it applies only to accused persons and not to those convicted of an offense, and second, in non-bailable offenses, it is confined to the category of persons visualized by Section 497. Under Sections 496 and 497 the Court can bail out a person only if he has been placed under actual custody or appears in an answer to a process issued or is brought before the Court by the police or by some other

authority. On the other hand, Section 498 would be called in aid, before the Court of Session and the High Court, even where the Court is not directly seized of the proceedings in question and where the arrest has not been made so far but anticipatory bail is asked for, e.g., where the case is still at the stage of investigation by the police or is pending in a subordinate Court. The power to grant such anticipatory bail would thus be confined to the High Court and the Court of Session and other Courts would be excluded from its scope.

11. From the above discourse, primarily, the pre-arrest bail is extraordinary relief and can be granted only in exceptional circumstances, if there is mala fide of the complainant and police in lodging the FIR. Prima facie, there is no mala fide of the complainant to lodge the FIR of the incident against the applicant. Previous conviction of the applicant in a criminal case as discussed supra, disentitle him for extraordinary relief as provided under Section 498 Cr.P.C. Also, there is nothing placed on record by the applicant, which could show that the applicant has been acquitted from the aforesaid case by the learned appellate Court.

12. The findings of the learned trial Court while rejecting the bail plea of the applicant is as under: -

*“5- I have carefully attended the arguments of learned counsel for the accused, learned counsel for the Complainant, as well as learned D.D.P.P. for the State. I have also gone through the contents of the instant Bail Application, as well as the material available on record. I find that the Complainant has filed F.I.R. being crime No. 1582/2021 against the accused persons Riaz Ahmed, brother of accused Riaz, and three unknown persons on account of attacking and possessing over the property of the Complainant in which chowkidar Mukhtar and Fayaz were residing along with their families, and they were dispossessed. I have also found that the accused has been nominated in the F.I.R. I have also found that learned counsel for the accused has contended that during his arguments that there is no previous criminal record of accused while as per prosecution version/contention of the Complainant’s counsel, the accused was convicted in the F.I.R. being crime No.554/2018 by learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Karachi East, vide judgment dated 31/10/2020 and this contention of the Complainant, has not been denied from the defense side. While earlier, the learned counsel for the accused had contended that the accused has no previous criminal record. I have also found that although the F.I.R. being crime No.554/2018 of Police Station Gulistan-e-Jauhar lodged by Saeed Alam has no concern with the present accused, but it is shown that the accused has previous criminal record and he is also previously convicted. I have also found that learned counsel for the accused and learned counsel for the Complainant have raised several other contentions for and against the prosecution version requiring detailed discussion, but these cannot be discussed in detail just to avoid disclosure the merits of the case.*

*6- It is well settled principle of law that pre-arrest bail is sought on extraordinary and exceptional circumstances and malafide of the Complainant in lodging the F.I.R. against the present accused, but in the above discussion and perusal of record there is no malafide of the Complainant has been shown in lodging the F.I.R. against the present accused so also any extraordinary and special circumstances have come on record which may makes the case of the present accused as of pre-arrest bail.*

*7- In view of the above discussion, I do not find any prima facie substance, which may persuade the Court for considering the confirmation of interim pre-arrest bail granted to the accused earlier in the present Bail Application. Hence, the interim pre-arrest bail granted to the accused earlier in the present Bail Application stands recalled. Bail bond of the accused is canceled and surety discharged. Consequently, the instant Bail Application stands dismissed being meritless.”*

13. In view of the above facts and circumstances of the case coupled with the track record of the applicant and his previous conviction in the aforesaid case, leads to the tentative view that the applicant is not entitled to the extraordinary relief of pre-arrest bail. Resultantly, the ad-interim pre-arrest bail order dated 06.12.2021 passed by this Court, is hereby recalled.

14. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at the time of trial.

JUDGE

Zahid/\*