

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Bail Appln. No. S-248 of 2022

Applicant(s) : Ghulam Sarwar @ Sarwar, Mohammad
Shahban @ Shahban and Nazar
Muhammad all three by caste Mugheri,
Through Mr. Saeed Ahmed Bijarani,
Advocate

Complainant : Zulfiqar Ali Nindwani,
Through Mr. Abdul Rasheed Abro,
Advocate

The State : Mr. Khalil Ahmed Metlo, A.P.G

Date of hearing & order: 01-08-2022

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ORDER

Adnan-ul-Karim Memon, J. Through instant bail application, the applicants seek pre-arrest bail in F.I.R No. 16/2022 of Police Station Karampur, registered, for the offenses under sections 324, 337-H (ii), 35, 504 P.P.C.

2. The objection has been raised on behalf of the complainant that a direct approach has been made by the applicants before this Court under section 498-A Cr. P.C, without resorting to first remedy before the learned trial Court. This objection is not sustainable, for the reason that Section 498, Cr. P.C confers original and concurrent/co-extensive jurisdiction on this Court and Court of Session to grant pre-arrest bail. However, the grant of pre-arrest bail was/is a remedy most extraordinary in nature, extended by diverting the usual course of law for the sole purpose of protecting the reputation and honor of an innocent citizen being hounded through abuse of the process of law for purposes sinister and oblige, such protection was/is based upon equity and could not be extended in every run-of-the-mill in the criminal case, prima facie founded upon incriminatory evidence, warranting custody for investigative purposes, as observed by the Honourable Supreme Court in its various pronouncements.

3. I have heard the learned counsel for the parties on the subject point, perused the record, and also examined the case law on the question involved herein above.

4. The arguments put forward by the learned counsel for the applicants are not sustainable for the reason that prima-facie there are specific allegations of having caused a specific injury against the applicants namely Ghulam Sarwar and Nazar Muhammad and the prosecution submits that there is sufficient material available on the police file in the shape of the ocular account being corroborated by the medico-legal evidence, bail before arrest could not be granted. At this stage learned counsel for the applicant has controverted the stance of the prosecution by referring to the statement dated 01.08.2022 and relied upon the order dated 2.4.2022 passed by learned Sessions Judge, Kashmir @ Kandhkot and order dated 3.1.2022, passed by this Court in Cr. Misc. A. No.5-250/2020 and inquiry report whereby the applicants have been declared innocent in the above case by the inquiry officer. However, the same report under section 173 Cr.PC in the aforesaid crime was discarded by the learned Judicial Magistrate vide order dated 16.4.2022. In such circumstances the applicants namely Ghulam Sarwar and Nazar Muhammad could not be granted bail before arrest to subvert and undermine investigative procedures merely on the plea of alibi as narrated by the learned counsel for the applicants though the same has been discarded by learned Civil Judge/Judicial Magistrate, Tangwani vide order dated 16.4.2022. Besides that malafide, manifestly intriguing upon the intended arrest was the only justification to suspend or divert the usual course of law, a step which was most extraordinary by all means.

5. Thus, seen from the aforesaid angle coupled with the provision of law, the applicants, namely Ghulam Sarwar and Nazar Muhammad have not been able to make out a case for the grant of pre-arrest bail in such an extraordinary situation; and this bail application to the extent of applicants, namely Ghulam Sarwar and Nazar Muhammad is, therefore, dismissed and interim order dated 16.5.2022, to their extent is hereby recalled, however, the applicant Muhammad Shahban @ Sshaban's Bail Application is confirmed on the same terms vide order dated 16.5.2022, for the reason that prima-facie prosecution has not brought any material and assigned his specific role in the F.I.R.

6. The observation recorded hereinabove is tentative and shall not prejudice the case of either party in the trial.

J U D G E