

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 510 of 2023

Date	Order with signature of Judge
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For hearing of main case

14.11.2023

Mr. Muhammad Daud Nareejo advocate for the applicants

Mr. Siraj Ali Chandio Additional PG

This Criminal Miscellaneous Application has been brought under Section 497 (5) of Cr. P.C for the cancellation of bail, granted to the respondents by the trial Court on 25.7.2023 in Cr. Bail Application No. 3953 of 2023. For convenience's sake, the relevant portion of the order dated 25.7.2023 is reproduced as under:-

“ 6. I have heard the learned counsel for both sides, and from a tentative assessment of police papers; I find that the accused is not named in the FIR and has been implicated in the instant case on the statement of co-accused Taj Muhammad. Moreover, no incriminating articles were recovered from the possession or on the pointatoin of the present accused which makes the case of accused one of further inquiry. It is the contention of the learned counsel for the complainant that accused has failed to hand over the mobile phone having SIM no. 03128483617 This argument is also supported by the 1. 0 who stated that despite receiving notice under section 160 Cr.PC the accused failed to produce the required mobile phone during investigation. The record shows that the accused has joined the investigation and 1.0 recorded his statement/interrogation report, however, there is nothing on record to show that the required mobile number i.e. 03128483617 was in use of accused nor I.O put any question about the said mobile phone number during investigation Further, the allegation against the present accused is that he planned the offence of robbery, thus, it requires evidence to connect the accused with the commission of the crime. Moreover, the applicant/accused has joined the investigation and also appearing before this Court on each and every date of hearing after obtaining ad-interim Bail

7. For the above reasons, I hereby confirm the interim pre-arrest bail earlier granted to the applicant/accused on same terms and conditions. The applicant/accused is directed to appear before the learned Trial Court”

2. The accusation against respondent No.1 is that on 01.07 2023 at about 10:00 hour at night time, they came to the house of the complainant and committed theft of cash and valuables, such report of the incident was given to police, who lodged the F.I.R against him under Section 397 /34 PPC at Aziz Bhatti Police Station.

3. At the outset I asked the learned counsel as to how this Cr. Misc. Application is maintainable when the complainant exonerated the accused Amir in the aforesaid crime, who allegedly acted with his accomplices later on their names have been given in the FIR. Learned Counsel for the applicant has mainly contended that there are reasonable grounds to believe that respondent No.1 has committed the offense, as alleged in the F.I.R. and the P.Ws have fully supported the case against respondent No.1, but the learned trial Court without considering the evidence collected by the I.O during the investigation has granted pre-arrest bail to him, hence, his bail is liable to be canceled.

4. Heard the learned counsel for the applicant and perused the material available on record.
5. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for cancelling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail which was already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles that apply to setting aside the order of acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.
6. In the instant case, it appears that respondent No.1 was admitted to interim pre-arrest bail by the learned trial court, which was confirmed by the said Court, vide order dated, 25.07.2023 and since then the respondent No.1 is on bail and has not misused the concession of bail. Besides the complainant has not asserted in his application that he has misused the concession of bail. The only ground raised in application for the cancellation of bail is that there was sufficient evidence against respondent No.1, but the learned trial Court admitted him to pre-arrest bail, as such no recovery could be effected resulted miscarriage of justice. In this regard, it may be observed that the offense under section 397 P.P.C. is non-bailable; however, being punishable with imprisonment, which may extend to 7 years, it does not fall within the prohibitory clause of Section 497, Cr.P.C., as it is yet to be ascertained whether the applicant is involved or otherwise further facts needs to be thrashed out by the trial court after recording the evidence. This well-settled law that in such cases rule is bail and not jail.
7. Pre-arrest bail is an extraordinary relief, whereas post-arrest bail is an ordinary relief. While seeking pre arrest bail it is the duty of the accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offenses with malafide and ulterior motives, as the respondent No.1 pleaded malafide on the part of the complainant.
8. For the foregoing reasons, no occasion has been found by this Court for interfering with the lawful exercising of the jurisdiction in the matter of bail by the learned trial Court. Under circumstances, instant Criminal Misc. Application is dismissed as being devoid of merit, along with pending applications.

JUDGE