

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Agha Faisal, J.
Abdul Mobeen Lakho, J.

Criminal Bail Application 1664 of 2023

Syed Ovais Hussain & Another
vs.
The State

For the Applicants : Mr. Aamir Mansoob Qureshi
Advocate
Mr. Syed Ovais Hussain
Mr. Zia Ur Rehman
Applicants
Date of hearing : 31.07.2023
Date of announcement : 31.07.2023

ORDER

Agha Faisal, J. (1) Granted. (2,3&4) This matter pertains to alleged extortion perpetrated by officials of the Sindh Building Control Authority and persons connected therewith; in respect whereof F.I.R. 488 of 2023 was registered on 22.06.2023 before P.S. Preedy, Karachi, citing offence/s under Section/s 384/385/427/34 P.P.C. r/w Section 7 ATA 1997. There are serious allegations of extortion by functionaries of the regulatory authority itself and the record suggests that part of the extortion money demanded had even been received.

2. The file reveals that applicant no. 1's application for pre arrest bail was dismissed by the Court of Anti-Terrorism No. VII, vide order dated 25.07.2023 in Cr. Bail Application 06 of 2023 (copy of the bail application also placed on record). It was averred that the pre arrest bail of the applicant no. 2 was also dismissed by the said Court, however, neither the dismissal order nor the application filed in such respect was placed before this Court, despite office objection in respect thereof.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, reproduction whereof is eschewed herein², it is observed as follows:

a. This matter pertains to allegations of extortion perpetrated by officials of the Sindh Building Control Authority etc. against developers / builders in Karachi. It is specified in the FIR that functionaries of the SBCA approached the site and threatened to demolish the project unless the amount demanded was provided thereto, notwithstanding all the requisite permissions etc. said to have been provided to the

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

accused. The applicant no. 1 is directly nominated in the FIR and a specific role has also been ascribed thereto. Applicants' counsel eschewed provision of the instrument whereby the applicant no. 2 had been implicated and despite claiming that his pre arrest bail had been dismissed, omitted to place either the pertinent order or even a copy of the application whereby such relief had been sought.

- b. It was the crux of the applicants' counsel's argument that pre arrest bail at the interim stage was the *right* of the applicant and any appreciation of the grounds etc. by the Court was only merited at the stage of confirmation of bail. Respectfully, we find ourselves unable to concur, as such a mechanical proposition would endanger the enshrined principles governing consideration of pre arrest bail³.
- c. In so far as the applicant no. 1 was concerned, bail was sought on the premise that the investigation is pending; charge not framed; the accused was posted in another district of Karachi; and the accusation against the said applicant was untenable in law. It may be pertinent to observe that while such grounds may be considered by the competent court in consideration of an application for post arrest bail, however, the applicant's counsel remained unable to demonstrate that the same could warrant the extra ordinary relief of pre arrest bail. There was absolutely no attempt to articulate that the applicant had no nexus with the relevant case and / or that incarceration was intended for designs extraneous, including harassment and humiliation, and *mala fide*.
- d. In so far as the applicant no. 2 was concerned, it was submitted that the applicant no. 2 was implicated vide an interim challan. Needless to state that no copy of any challan, interim or otherwise was disclosed before this Court. While it was averred that the said applicant's pre arrest bail was dismissed by the trial court, neither the order was placed on record nor even the application whereupon such relief was sought. With respect, it is observed that the particulars of implication of the applicant no. 2 (and any orders passed in such regard) have been withheld from this court and such an endeavor *prima facie* appears to have been voluntary. Under such circumstances no case could be made to consider the relief claimed.
- e. The applicants' counsel placed reliance upon an order⁴ of a learned Single Bench of the Lahore High Court in support of his submissions. Such reliance was unmerited as the facts and circumstances were entirely distinguishable *inter se* and even otherwise it is settled law that the determination of each bail matter has to be predicated upon its own distinctive facts and the Court was required to ascertain whether, in the distinct circumstances, a fit case for bail was made out⁵.
- f. The learned trial court has dismissed the bail application observing that the accused is nominated in the FIR; a specific role has been ascribed thereto; a portion of the extortion money was admittedly received; no previous enmity between the complainant and the accused; no manifest *mala fide* demonstrated there before, hence, no case made out for pre arrest bail. Applicants' counsel has been unable to demonstrate any infirmity with the order, denying pre arrest bail to the applicant no. 1⁶. In so far as the applicant no. 2 is concerned, the pertinent record, imperative for this Court to appraise, albeit tentatively, while considering an application for pre arrest bail has not been

³ Per Qazi Amin J in *Rana Abdul Khaliq vs. The State* reported as 2019 SCMR 1129.

⁴ 2006 PCr.LJ 1087.

⁵ *Muhammad Faiz alias Bhoora vs. The State* reported as 2015 SCMR 655.

⁶ Per Saleem Akhtar J. (as he then was) in *Nasir Muhammad Wassan vs. The State* reported as 1992 SCMR 501.

disclosed. Under such circumstances, the relief of pre arrest bail could not be granted blindly.

4. The Supreme Court⁷ has maintained that grant of anticipatory bail, to an accused is an extraordinary judicial intervention in an ongoing or imminent investigative process as it interferes with the mechanics of investigation and prosecution. It has also been observed that while the statute does not expressly provide for such a remedy, it has always been recognized in our jurisprudence⁸, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honor from the humiliation of arrest, intended for designs sinister and oblique⁹.

It has, however, been illumined that this remedy, oriented in equity, may not be invoked in every criminal case¹⁰, prima facie supported by material and evidence, constituting a cognizable / non-bailable offence and warranting arrest, which is an inherent attribute of the dynamics of the criminal justice system with a deterrent impact; it is certainly not a substitute for post arrest bail¹¹. These time honored enshrined principles governing grant of pre arrest bail have been recently reiterated by the Supreme Court in *Ahtisham Ali*¹².

5. In the present facts and circumstances the learned counsel has been unable to set forth a *prima facie* case for consideration of judicial refuge and it has not been demonstrated that incarceration is intended for designs extraneous, including harassment¹³ and humiliation¹⁴, and *mala fide*¹⁵.

6. In view hereof it is the assessment of this Court that the learned counsel for the applicants has been unable to make out a fit case¹⁶ for grant of the extra ordinary¹⁷ concession of pre-arrest bail, hence, the present application is hereby dismissed. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

JUDGE

⁷ Per Qazi Muhammad Amin J. in *Ghulam Farooq Channa vs. The Special Judge ACE (Central I) Karachi & Another (Criminal Petition 169 of 2020)*.

⁸ Per Cornelius J. in *Hidayat Ullah Khan vs. The Crown* reported as *PLD 1949 Lahore 21*.

⁹ *Abdul Aziz Memon vs. The State* reported as *2020 SCMR 313*.

¹⁰ *Gulshan Ali Solangi vs. The State* reported as *2020 SCMR 249*.

¹¹ *Rana Abdul Khaliq vs. The State* reported as *2019 SCMR 1129*.

¹² Per Muhammad Ali Mazhar J in *Ahtisham Ali vs. The State* reported as *2023 SCMR 975*. Reliance was placed upon *Rana Abdul Khaliq vs. The State* reported as *2019 SCMR 1129*.

¹³ *Murad Khan vs. Fazle Subhan & Another* reported as *PLD 1983 Supreme Court 82*.

¹⁴ *Ajmal Khan vs. Liaqat Hayat & Another* reported as *PLD 1998 Supreme Court 97*.

¹⁵ *Mukhtar Ahmed vs. The State* reported as *2016 SCMR 2064*.

¹⁶ *Zia Ul Hassan vs. The State* reported as *PLD 1984 Supreme Court 192*.

¹⁷ *Muhammad Sadiq & Others vs. The State* reported as *2015 SCMR 1394*.