

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 1402 of 2023

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| Date | Order with signature of Judge |
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For hearing of bail application

31.07.2023

Mr. Abdul Ghaffar Khan, Advocate for applicants. Applicants are also present.

Mr. Shahzad Afzal, Advocate along with the complainant.

Mr. Zafar Ahmed Khan, APG.

1. Applicants Mst. Tasleem, Abdul Wahab, Sohail, Huma, Tahir and Babar are seeking pre-arrest bail in FIR No.62/2023, under Section 354, 337-A(i), F(i), F(v), F(vi), 34 PPC, at P.S. Garden, Karachi.
2. The allegation against the applicants/accused is that they beaten the complainant owing to which she suffered injuries.
3. Per learned counsel there is no eye witness of the alleged incident and that there is a dispute pending adjudication between the parties. Learned counsel further contended that the complainant has named the applicants/accused in the present FIR due to enmity. He further contended that the applicants/accused are feminine gender hence, they are entitled for concession of bail, whereas, the male accused is concerned, their guilt will be established at the conclusion of trial, therefore, they are also entitled for concession of bail.
4. Learned APG with the assistant of learned counsel for the complainant argued that the applicants/accused has been named in the FIR with specific role of maltreating the complainant and that the

alleged offences are not bailable, therefore, the applicants/ accused are not entitled for concession of bail.

5. I have heard the submissions of learned counsel for the parties and scanned the available material. It is apparent from the contents of FIR that the applicants/accused are not only named in the FIR but also described with specific role of maltreating the complainant. Learned trial Court declined to enlarge the applicants/accused on bail considering the severity of the offence and injuries suffered by the complainant and furthermore the offence 337f(v) PPC is not bailable.

6. It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the applicant/accused has to satisfy the Court with regard to the basic conditions quantified under Section 497 of the Code of Criminal Procedure, 1898 ("Cr.PC") vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of Rana Abdul Khaliq Vs The State and others (2019 SCMR 1129), Hon'ble Supreme Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore an accused seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course

of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427), the Hon'ble Supreme Court has discussed the framework and guidelines for granting bail before arrest under Section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the accused were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the accused, or that the accused would in such an eventuality suffer irreparable harm. The Hon'ble Supreme Court again in the case of Ahtesham Ali v. The State (2023 SCMR 975) laid down the following parameters for pre-arrest bail:-

(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that

he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such an accused should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.

7. It is settled principle of law while entertaining bail plea of any accused that Court has only to see whether accused is connected with the commission of crime or not. Furthermore, the question of granting or refusing bail depends upon particular circumstances of each case. The discretion of grant or refusal of bail under section 497 Cr.P.C must be exercised on judicial principles. Bail is always under the discretion of the Court and this discretion is necessarily to be exercised upon the facts and circumstances of each case according to sound judicial principles. The settled position of law is that accused cannot claim bail as a matter of right in non bailable offence. The facts and circumstances of each and every case are to be kept in mind while deciding bail application¹.

8. For the foregoing reasons, I do not find merit in the bail application which was dismissed vide short order dated 24.07.2023 to the extent of applicant/accused Abdul Wahab, Sohail, Tahir and Babar.

¹ PLD 1997 S.C 545 and 2002 SCMR 442

So far as the applicant/accused Mst. Tasleem and Huma being feminine gender were granted bail and the ad-interim pre-arrest bail granted to them vide order dated 23.06.2023 was confirmed on the ground that accused Mst. Tasleem and Huma being feminine gender are entitled for bail as they being women, their case is covered by the first proviso to Section 497(1), CrPC. The said proviso, as held in Tahira Batool case² makes the power of the court to grant bail in the offences of prohibitory clause of Section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of Section 497(1), CrPC. It means that in cases of women accused etc. as mentioned in the first proviso to Section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of Section 497(1), CrPC.

9. Before parting with the above, findings are tentative in nature which renders no help to any party.

JUDGE

Aadil Arab

² Tahira Balol v. the State PLD 2022 S.C. 764