

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 963 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application.

20.07.2023

Mr. Israr Ahmed, Advocate for the applicants/accused.

Mr. Muhammad Yousuf Narejo, Advocate for the complainant.

Mr. Faheem Panhwar, DPG.

Applicants are present in interim pre-arrest bail.

1. Applicants Muhammad Bux, Falak Sher and Qurban Ali are seeking pre-arrest bail in FIR No.335/2023, under Section 324/34 PPC, at P.S. SSHIA, Karachi, Karachi.
2. The allegation against the applicants/accused is that they with common intention made firing upon Mir Muhammad with intention to commit his murder.
3. Per learned counsel the applicants/accused there is a dispute over the property between the parties and that the complainant also is an accused in an FIR lodged by the applicants/accused. He further contended that there is a counter FIR and several criminal as well as civil cases are pending adjudication between the parties, therefore, the applicants/accused are entitled for concession of bail.
4. On the other hand, learned counsel for the complainant assisted by learned DPG argued that the applicants/accused made straight firing upon the victim Mir Muhammad which hit on his face owing to which he received sever injuries. During course of arguments, learned counsel for the complainant introduced on record some photographs

showing that the victim Mir Muhammad received fire shot injuries on his face which is a vital part of the body and that it is a well settled principle that whenever accused fired upon the vital part of the victim in that circumstances they are not entitled for concession of bail.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It is manifestly clear that the applicants/accused are not only named in the FIR but also has been comprehensively described with specific role of firing upon the victim Mir Muhammad owing to which he received a fire arm injury on his face which is a vital part of the body. Learned DPG produced the Medico Legal Certificate issued by Abbasi Shaheed Hospital which unequivocally shows that the victim Mir Muhammad received two fire arm injuries one is Lacerated wound measuring 01 cmx 0.5 cm over lip and acute bleeding wound and the second is also a lacerated wound of multiple of pallets over right side of face. Learned trial Court in the impugned order dated 28.04.2023 observed that the applicants/accused were also nominated in another FIR bearing No. 318/2023 and having availed the benefit of pre-arrest bail, they repeated the offence and resultantly the present FIR No.335/2023 was also lodged. The offence with which applicants/accused are charged is heinous in nature as well as 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 stands dismissed and interim pre-arrest bail granted to the applicant/accused vide order dated 06.05.2023 is hereby recalled.

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

JUDGE

Aadil Arab

¹ PLD 1997 S.C 545 and 2002 SCMR 442