

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.1427 of 2023

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Date	Order with signature of Judge
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For hearing of bail application

**04.09.2023**

Mr. Anwar Zaib advocate for the applicant  
Mr. Muhammad Arshad Shar advocate and Mr. Aamir Raza Dayo  
advocates files Vakalatnama on behalf of the complainant.  
Mr. Zahoor Shah, Additional PG

Through this bail application under Section 498 Cr.P.C., the applicant Naveed has sought admission to pre-arrest bail in F.I.R No. 308/2023, registered under Section 381/109/34 PPC, lodged at Police Station Boat Basin Karachi. The earlier bail plea of the applicant has been declined by the learned Xth Additional Sessions Judge Karachi (South) vide order dated 22.06.2023 in Criminal Bail Application No.2033/2023.

2. The accusation against the applicant is that on 26.05.2023, he in connivance with his sister Mst. Haseena committed theft of jewelry articles and cash amount from the house of the complainant, such report of the incident was given to Boat Basin Police Station, who lodged the report under Section 381/109/34 PPC, during the investigation co-accused Mst. Haseena named the applicant to have committed theft and recovery of certain articles was made on her pointation.

3. It is inter-alia contended by the learned counsel that the prosecution received prior information for the presence of the co-accused Mst. Haseena who has named the applicant in the aforesaid crime. However, they failed to associate the witnesses from the locality, so he is entitled to be released on pre-arrest bail. He next argued that there is no evidence against the applicant about such theft, allegedly committed by co-accused therefore, the applicability of the above Sections of law is yet to be determined during the trial. Learned counsel further argued that the statement of the co-accused is inadmissible under the law as such the applicant cannot be saddled with an alleged crime based on the statement of the co-accused. He prayed for a grant of pre-arrest bail to the applicant. In support of his contention, he relied upon the cases of *Muhammad Tanveer vs the State and another* **PLD 2017 SC 733**, *Muhammad Nawaz alias Karo vs The State* **2023 SCMR 734**, *Iftikhar Ahmed vs The State*

**PLD 2021 SC 799, Shahzad vs. The State 2023 SCMR 679, Zafar Iqbal vs Muhammad Anwar and others 2099 SCMR 1488, Mst. Ghazala vs. The State 2023 SCMR 887, Mst. Kainat Bibi vs. The State 2022 SCMR 609 and Tahir Batoool vs The State and another **PLD 2022 SC 764.****

4. Learned APG assisted by the learned counsel for the complainant has opposed the bail plea of the applicant on the ground that the theft articles were recovered from the possession of the co-accused Mst. Haseena sister of the applicant, who has named the applicant as her accomplice; that no enmity has been shown to the police and complainant; and that sufficient material is available against the applicant to connect him with the alleged crime as he has failed to join the investigation. He prayed for the dismissal of his bail application.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. The tentative assessment of the record reflects that the co-accused namely Mst. Haseena, sister of the applicant was arrested in the aforesaid case and her Bail Application No. 1707 of 2023 was entertained by this Court vide order dated 04.09.2023 whereby she was allowed the post-arrest bail under the first proviso to Section 497(1) Cr. P.C in terms of the ratio of the judgments passed by the Supreme Court in the cases of Tahira Batoool v. The State (PLD 2022 SC 764), Muhammad Tanveer vs the State, and another (PLD 2017 SC 733), Muhammad Nawaz alias Karo vs The State (2023 SCMR 734), Ifikhar Ahmed vs The State (PLD 2021 SC 799), Shahzad vs. The State (2023 SCMR 679), Zafar Iqbal vs Muhammad Anwar and others (2099 SCMR 1488), Mst. Ghazala vs. The State (2023 SCMR 887), Mst. Kainat Bibi vs. The State (2022 SCMR 609).

7. The applicant has approached this Court for a grant of pre-arrest bail under Section 498 Cr. P.C on the premise that the role of the applicant has been assigned by the co-accused in her statement during the investigation, which is against the essence of Articles 38 and 39 of the Qanun-e-Shahdat Order 1984, however, his role has not been described in the subject FIR; and, he has been booked under Section 109 PPC, which requires further inquiry. Primarily, pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail.

8. Prima facie, the cooperation of the applicant in the investigation is material, and the applicant is on the run as such the investigation has been

hampered, However, he has approached this Court under Section 498 Cr.P.C. without alleging any malafide on the part of police or complainant merely uttering the word 'malafide' or 'ulterior motive' on the part of the complainant and/or police is not sufficient to attract the provision of Section 498 Cr.P.C., the reason is that bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of the Code of Criminal Procedure, 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 disgrace and dishonor him, which factum is missing in the present case

9. At the bail stage, only a tentative assessment is to be made and nothing has been brought on record to show any ill-will or *malafide* on the part of the complainant, which is the requirement for grant of pre-arrest bail.

10. In view of the above, the applicant/accused has failed to make out a prima facie case for the grant of pre-arrest bail in light of sub-section (2) of Section 497 Cr.P.C. In such circumstances, the instant CrI. bail Application stands dismissed and interim order dated 26.6.2023 earlier granted to the applicant/accused is hereby recalled. The applicant is directed to surrender to the concerned Investigating Officer for further investigation into the matter.

11. Needless to mention the observations made hereinabove are tentative and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE

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