

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1680 of 2023

Applicants : i. Abdul Jabbar S/o Muhammad Ali
ii. Ali Tanoli @ Mubashir Ali S/o Shoukat Ali
Through Mr. Naseer ul Hassan Khokhar,
Advocate

Complainant : Rana Sadiq S/o Inayat Khan
Through M/s. Riaz Ahmed Bhatti & Allah
Ditta Shakir, Advocates

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. Prosecutor General, Sindh.

Date of hearing : 17.08.2023

Date of order : 17.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.643/2022 registered under Sections 147, 148, 149, 341, 504, 506, 337-A(i), 337-F(i), 395 PPC at PS Sukhan, after their bail plea has been declined by Additional District & Sessions Judge-III/Model Criminal Trial Court, Malir, Karachi vide order 25.07.2023.

2. The details and particulars of the FIR are already available in the memo of bail application and FIR, which can be gathered from the copy of FIR attached with the application, hence, needs not to reproduce the same hereunder.

3. Mr. Naseer ul Hassan Khokhar, Advocate files Vakalatnama on behalf of the applicants/accused, which is taken on record. Per him, applicants/accused are innocent and have falsely been implicated in this case; that the

complainant is a habitual offender as he has previously registered near about 7/8 false FIRs against different persons and after taking valuable articles, mobile phones and cash, he has compromised with the parties and as such withdrawn the said FIRs; that the allegation levelled against the applicants is general in nature; that no specific role has been assigned against the applicants/accused; that co-accused Muhammad Ali has already been granted bail by the learned trial Court, as such, they are also entitled for bail in view of the rule of consistency. He lastly prays for confirmation of pre-arrest bail.

4. On the other hand, learned counsel for the complainant submits that name of the applicants/accused transpires in the FIR with specific role that they alongwith other accused attacked upon the complainant, as such, he received severe injuries on his head and different parts of body; that medical report was challenged before the Medical Board but subsequently, Medical Board confirms that the injuries received by the complainant are genuine. Further, during course of arguments, complainant has produced a mobile phone video wherein accused Abdul Jabbar can be seen admitting his guilt about the incident. Learned Addl. P.G. opposes for grant of bail on the ground that injury received by the complainant falls within the prohibitory clause, as such, they are not entitled for concession of bail.

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

6. Admittedly, the name of the applicants/accused finds place in the FIR with specific role that prior to this on the Faebook, there were exchanged of hot words between the parties and thereafter, on the day of incident when complainant was going to Gidar Colony from his house. Suddenly, applicants alongwith other accused stopped him and miserably tortured him alongwith his guest and driver sitting in the vehicle and thereafter snatched his mobile

phone, cash amount Rs.85,000/-, one license pistol and repeater so also they robbed mobile phone from the driver. The ocular evidence finds support from the medical evidence. Further, the medical certificate issued by the M.L.O. was challenged by the applicants before the Special Medical Board but in the findings of the Medico Legal Officer, it was found correct.

7. The complainant present in the Court states that accused Abdul Jabbar uploaded his video wherein the accused was issuing threats to the complainant. In support of his contentions, he has played the said clip in the Court room. Sufficient material is available on record to connect the applicants/accused with the commission of offence. At bail stage, only tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the learned counsel for the applicant, which could be the ground for false implication in this case.

8. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of **'Rana Abdul Khaliq v. The STATE and others'** [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that 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 the investigation.

9. In view of the above, learned counsel for the applicant/accused has failed to make out a case for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicants/accused vide order dated 31.07.2023 is hereby recalled and the bail application is **dismissed**.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Kamran/PA