

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1429 of 2023

Hassan

Applicant Mr. Muhammad Ramzan, advocate

The State

Through Mr. Muhammad Iqbal Awan, APG a/w SI Gulzar Ali, PS Steel Town

Raja Noman Razaqat

Complainant through: Present in person

Date of hearing

& order 08.08.2023

Adnan-ul-Karim Memon, J. — Applicant Hassaan seeks pre-arrest bail in FIR No.645/2022, registered under Sections 377/511 RA v 377-11 PPC at PS Steel Town, Karachi. His earlier bail plea has been declined by the trial Court vide order dated 23.06.2023 on the premise that no extraordinary circumstances are available to extend the benefit of Section 498 Cr.P.C.

2. The accusation against the applicant is that on 06.10.2022 he attempted to commit an unnatural offence with the son of the complainant namely Raja Muhammad Rehan aged about 08 years. The report of the incident was given to Steel Town Police, district Malir and such a report was registered on the same day. The prosecution has submitted a challan before the trial Court, however, the DNA report obtained by the prosecution excludes the applicant as a possible contributor vide Sindh Forensic DNA and Serology Laboratory report dated 17.11.2022.

3. Learned APG assisted by the complainant who is present in person has raised their no objection with the interim bail granted to the applicant vide order dated 26.06.2023 is confirmed based on medical evidence brought on record by the investigating officer.

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

5. This Court is conscious of the fact that the concept of pre-arrest bail is an extraordinary relief, which is limited to rare cases based upon trumped-up

charges rather it has to be extended sparingly and to avail such relief of Extraordinary, it is obligatory to establish that the prosecution has been launched, which is based upon malafides, ulterior motives and if it is materialized, it would certainly cause irreparable loss to his reputation. The Supreme Court in the recent judgment has held that such practice to grant ad-interim bail is an extension of such a remedy to act as a shield to protect innocent persons facing the highhandedness of individuals or authority against frivolous litigation. The rationale to grant ad-interim bail is synonymous with passing a prohibitory injunction; however, the concept of ad-interim bail is more precious as compared to the prohibitory injunction. In the former, the liberty of the person is involved whereas in the latter, only proprietary rights are in question. The status of the accused becomes "custodia legis" during the period when ad-interim bail is granted till its final adjudication subject to furnishing of sureties to the satisfaction of the Court.

6. The provision of Sec. 497(2) Cr. P.O confers powers upon the Court to grant bail during the investigation, inquiry, or trial subject to an opinion formed by the Court that material placed before it is not sufficient to establish guilt and it still requires further inquiry into his guilt whereas Section 498 Cr. P.C deals with two situations:-

- (i) The fixation of the amount or bond according to the circumstances;
- (ii) Conferment of powers to grant bail to a person who is not in custody;

7. Tentative assessment of the record reflects that the applicant has been booked by the complainant with the allegation of unnatural offense/sodomy with his minor son and as per the report of Sindh Forensic DNA and Serology Laboratory, the applicant is not a contributor to the mixed DNA sample obtained from the epithelial fraction of item number one beside the applicant is of 13/14 years of age.

8. Since malafide intention has been attributed to the prosecution on the plea that when he was not the main contributor to the alleged offense as to why he was booked in the case of unnatural offense being of tender age which confirmed the report through medical evidence, however, I leave this aspect of the case to be taken care of by the learned trial Court after recording the evidence of the parties, therefore, the applicant has been able to make out his

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case for confirmation of bail for the reason that the concept of pre-arrest bail is to save the accused from the trine of the police being dealt in the frivolous case and the present case the prosecution has not collected sufficient incriminating material to connect him with the alleged crime.

9. Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail. Court can consider the merits of the case in addition to the element of rnalafides/ulterior motives which has to be adjudged in the light of law laid down by the Supreme Court in its various pronouncements. As a consequence, courts of law are under the bounded duty to entertain a broader interpretation of the "law of bail" while interpreting material placed before it more liberally to arrive at a conclusion that is badly required due to the apparent downfall in the standard of investigation.

10. Otherwise liberty of a person is a precious right that has been guaranteed under the constitution of the Islamic Republic of Pakistan. 1973. To abridge or curtail liberty merely on the ground of being involved in a criminal case without adjudging it on merits would certainly encroach upon the right against free life. This right should not be infringed upon. rather it has to be protected by the act of the Court otherwise it may frustrate the concept of safe administration of criminal justice.

11. The accumulative effect of the whole discussion is that this Court is of the tentative opinion that the applicant has made out a case for the grant of extraordinary relief of pre-arrest bail, hence is squarely entitled to the same. In view of the above, the interim bail granted to the applicant vide order dated 26.06.2023 is hereby confirmed on the same terms and conditions.

12. The observations recorded hereinabove are tentative and shall not prejudice the case of either party at trial.

13. The bail application is disposed of in the above terms.

JUDGE