

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2049 of 2023

Date	Order with signature of Judge
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For hearing of bail application

03.10.2023

Mr. Qaimuddin Khawaja advocate for the applicant
Mr. Muhammad Nawaz advocate for the complainant
Mr. Muntazir Mehdi Addl. P.G along with ASI Ghulam Hyder of PS
Mirpur Sakro.

Through this bail application under Section 498 Cr.P.C., the applicant Babu Amro has sought admission to pre-arrest bail in F.I.R No. 40/2022, registered under Section 457/380//34 PPC, lodged at Police Station Mirpur Sakro, District Thatta.

2. The accusation against the applicant is that he along with his accomplices trespassed the otaq of complainant Haji Naik Muhammad Jokhio and committed theft of his licensed rifle and pistol.

3. Per learned counsel for the applicant, the bail of the co-accused has already been confirmed by this Court vide order 15.11.2022 in criminal Bail Application No. 1646/2022, as such rule of consistency is also applicable in this case. Learned counsel submits that when he came to know about the instant case, he immediately surrendered before the learned trial Court, however, the trial Court was pleased to dismiss his bail application vide order 31.05.2022. learned counsel further contends that the applicant has pleaded malafide on the part of the complainant and police who are bent upon hunting the applicant on the plea of the complainant as such he has approached this Court for a grant of pre-arrest bail in the aforesaid crime under Section 498 Cr. P.C.

4. Learned Addl. Prosecutor General Sindh opposed the confirmation of bail on the ground that the applicant along with his companion deprived the complainant of his valuables hence there is no reason for false implication of the applicant.

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

6. Prima facie, the applicant has to show malafide and ulterior motives on the part of the complainant and Police to claim bail before arrest under Section 498 CR.PC, irrespective of the factum whether the offense is of a simple or serious nature. In principle, the term malafide

means in bad faith. A malafide action is performed with dishonest intent; a person purposely attempts to cheat or deceive you.

7. The Supreme Court in the recent judgment has held that malafide, ulterior motives, or false implication are essential for pre-arrest bail. Pre-arrest bail can be granted where the arrest of the accused is imminent with ulterior motive, mala fides, or due to his false implication apparent on the face of the record, not just this but in addition thereto, the accused must also show that his/her arrest was being sought for ulterior motives, particularly on the part of the police to cause irreparable humiliation to him/her and to disgrace and dishonor him/her in the crime. Additionally, such accused should further establish that he/she had not done or suffered any act, which would disentitle him/her to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law. Reliance can be placed on the case of Maqbool Ahmad Mahessar v. National Accountability Bureau (NAB) (2021 SCMR 1166).

8. The Supreme Court in the case of Kamran Ataullah v. The State (2021 SCMR 449) has held that an accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially includes arrest to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offense through the collection of evidence consequent upon arrest.

9. The tentative assessment of the record reveals that the applicant in connivance with his accomplices trespassed the otaq of the complainant and committed theft. However it is rather shocking to know that the FIR of the present case has been lodged by the complainant after a delay of Nineteen days, such delay is prima facie fatal for the prosecution as deliberation in the matter on the part of the complainant cannot be ruled out; besides in a further statement the star witness has recoiled from his statement recorded under section 161 Cr. P.C., with the narration that he was/is unaware of the alleged incident, while the complainant had misused his name in the FIR with malafide intention. Prima facie the applicant has been nominated in the charge sheet merely based on the statement of the complainant's employees and there is no direct role of the applicant in the committing of alleged theft from the Otaq of the complainant.

10. In view of the above tentative assessment, it is observed that not only there is an inordinate delay in lodging the FIR but the subsequent events highlighted above wherein the claim of the complainant is also under a grey area. Prima facie, the above narration of facts creates doubt in the prosecution story and requires further inquiry. Therefore, at this

stage, the element of malice and malafide on the part of the complainant cannot be ruled out as his prima-facie intent is to recover his theft articles from the applicant which is not the function of this Court as the investigating officer failed to recover the alleged theft articles during the investigation, these all factums make the case of the applicant to be one wherein the exercise of extraordinary discretion of pre-arrest bail would be just to meet the ends of justice, particularly, when the circumstances warrant further inquiry and the fact that the alleged offense of theft do not fall within the ambit of prohibitory clause of section 497 Cr. P.C. wherein grant of bail is a rule and refusal is an exception so far as trespass is concerned it is for the trial court to see whether such incident had ever taken place at the hands of the applicant or otherwise. Reliance is placed on the cases of *Muhammad Ramzan alias Jani Vs. The State* (2020 SCMR 717).

11. The intent behind the grant of bail is to safeguard the innocent person from the highhandedness of police/ complainant if any; and, very strong and exceptional grounds would be required to curtail the liberty of the accused charged, before completion of the trial, which otherwise is a precious right guaranteed under the Constitution of the country. I expect the District Courts to adhere to these binding principles in the future and not to act mechanically in the matter of granting or refusal of bail because the liberty of citizens is involved in such matters; therefore, the same should not be decided in a vacuum and without proper judicial approach and follow the principles laid down by the Supreme Court in bail matters in the cases of *Khan Asfandyar Wali and others v. Federation of Pakistan* (PLD 2001 SC 607), *The State v. Syed Qaim Ali Shah* (1992 7 SCMR 2192) and *Tariq Bashir V. The State* (PLD 1995 SC 34).

12. In view of the facts and circumstances narrated above, I am of the considered view that the learned trial Court has erred in appreciation of law on the subject while rejecting the pre-arrest bail of the applicant, hence, the same is set at naught, as a consequent I am of the considered view that the case of the applicant is based on the term malafide and fully covered under section 498 Cr.PC, entitling for the confirmation of pre-arrest bail earlier granted to the applicant vide order dated 14.09.2023 on same terms and conditions.

13. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at the trial.

JUDGE