

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application. No. S-16 of 2024.

(Hamayoon Shahzad Vs. The State

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For Orders on MA No. 138/2024.
2. For hearing of bail application.

Date of hearing and Order 20-05-2024

Mr. Qurban Ali Malano advocate for the applicant along with applicant.

Mr. Zulfiqar Ali Jatoi, Addition, Assistant P.G for the State.

ORDER.

Adnan-ul-Karim Memon J:- The applicant seeks indulgence of this Court against an order dated 5.01.2024 of Additional Sessions Judge V (Sukkur) whereby the trial court while dismissing the bail application of the applicant has denied to him the pre-arrest bail in FIR No. 273/2023 registered for offenses under Section 420, 406 PPC, of P.S A Section Sukkur.

2. The accusation against the applicant as per FIR/Crime No. 273 of 2023 of PS A-Section District Sukkur is that the Government property/Dozer D8K No.3 was handed over to the applicant on monthly rent which was misappropriated; such F.I.R of the incident was lodged in the year 2023 by Executive Engineer Pumping Sub-Division of Upper Sindh Mechanical Division Irrigation Sukkur, after a delay of more than seven years, his earlier bail was declined by the learned IV-Additional Sessions Judge Sukkur vide order dated 05-01-2024 on the premise that the applicant had misappropriated the Government property, thus no case of extra ordinary circumstances was created for pre-arrest bail.

3. Learned counsel for the applicant submits that the criminal case is at the verge of conclusion as in this regard he filed his statement whereby deposition of Investigating Officer/ASI Zamir Hussain Khaskheli has been recorded in which he has admitted that he did not recover the case property during his investigation. He further submitted that the inquiry of the alleged incident was conducted in the year 2015 whereby the inquiry

officer opined that the official respondents were involved in the case. He next submitted that there is delay of more than nine years in lodging of the FIR, such delay has not been explained; that applicant has nothing to do with the alleged case property to be usurped by him as suggested by the prosecution; that the section 420 PPC is bailable whereas section 406 PPC is not attracted and does not fall within the prohibitory clause of section 497 Cr.P.C; that there is malafide intention on the part of the complainant to book the applicant after nine years as such extra ordinary jurisdiction can be exercised under section 498 Cr.P.C; he prayed for confirmation of the interim pre arrest bail already granted to the applicant vide order dated 08-01-2024.

4. The learned Additional P.G assisted by the Investigating Officer who is present in person has opposed the bail plea of the applicant and submitted that the applicant is not able to demonstrate any malafides in lodging the FIR nor is his arrest being sought with ulterior motives, which remains the primary test for the grant of pre-arrest bail. Learned Additional PG submitted that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations, to protect the innocent person against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or an alternative to pre-arrest bail. He next argued that the applicant has been specifically nominated in the subject crime with a specific role of misappropriation of government property and caused loss to the public exchequer. Per learned Additional PG, the version of the complainant party is supported by the statements of the witnesses recorded under Section 161, Cr.P.C. As such no extraordinary circumstances are available to thwart the investigation process. On the point of the defense version, as pleaded by the applicant, is concerned, he submitted that this Court is not to make a probe into the defense version to advance a plea of bail, rather it has to assess tentatively the material produced before it and to see if reasonable ground exists to believe, prima facie involvement of accused in the commission of the offense and if the accused found connected with the commission of the offense, he will not be released on bail based on further inquiry. He prayed for the dismissal of the bail application.

5. I have heard the learned Counsel for the Applicant, learned A.P.G for the state, and perused the material available on record.

6. It is now well settled that while granting extraordinary relief of pre-arrest bail, the merits of the case can be touched upon in terms of the ratio of the judgment of the Supreme Court in the cases of Javed Iqbal Vs. The State 2022 SCMR 1424 and Miran Bux v. The State (PLD 1989 SC 347). However, the law of bail under Section 497 Cr. P.C, wherein it is provided that a person shall not be released on bail if there appear to be reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years, though all the offenses do not fall within the prohibition contained in Section 497 Cr. P.C, however in pre-arrest bail this Court is only required to see the ulterior motives and malafide of the complainant and police and will also tentatively assess the material and can also touch the merits of the case so far as the allegations contained in the F.I.R, and statement of PWs and other material points available on the police file. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offense and if the answer is in the affirmative he/she is not entitled to grant even post and/or pre-arrest bail.

7. The tentative assessment of the record reveals the following position of the case;-

a) The alleged incident took place on 28-11-2014 and reported to the local police on 20-10-2023 after about more than seven years.

b) That as per inquiry report the officials of the Office of Executive Engineer Upper Sindh Mechanical Division Sukkur, Assistant Engineer Workshop Sub-Division Sukkur and, Auto Electrician are involved; whereas the complainant approached the local police rather than approaching the Provincial Anti-Corruption Establishment.

c) That complainant ASI Zamir Hussain has deposed that he did not recover the case property from any of the person involved in the case.

d) The case is at the verge of conclusion.

8. It is well settled by now that it is not possible in each case to prove the malafide but the same can be gathered from the facts and circumstances of the case. Even otherwise, if an accused person has a good case for post-arrest bail then merely at the wish of the complainant, he/she cannot be sent behind bars for a few days by dismissing his/her application for pre-arrest bail. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Khalil Ahmed Soomro vs. The State **PLD 2017 SC 730**.

9. In view of the above tentative assessment, prima-facie not only there is an inordinate delay of more than seven years in lodging the FIR but the subsequent events highlighted above wherein the claim of the parties on the subject property/Dozer D8K No.3 is to be determined by the trial court, based on documentary evidence and most of the witnesses have been examined and now the trial is at the verge of conclusion; 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 obtain possession of the subject property/Dozer D8K No.3 which is not the function of this court however it is for the parties to take resort of civil proceedings, these all factums makes 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 offenses 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. Reliance is placed on the cases of Muhammad Ramzan alias Jani Vs. The State and others (2020 SCMR 717).

10. In principle, the delay in lodging the FIR is fatal for the prosecution, so far as bail is concerned and in the present case, there is prima-facie delay of more than seven years in lodging the FIR. Besides no recovery has been shown by the Investigating Officer, who is even otherwise clueless, which has caused damage to the prosecution case and nobody is bothered to see this factum; therefore this Court is left with no option, but to accept the plea of applicant at this stage for grant of pre-arrest to him.

11. The essence of the above discussion is that the applicant has succeeded in making the case for the confirmation of the pre-arrest bail, hence, this bail application is allowed and the ad-interim pre-arrest bail already granted to the applicant vide order dated 08.01.2024 is confirmed on the same terms and conditions.

12. Needless to mention any observations made in the above order are tentative and shall not influence the trial court in any manner. The trial court is directed to conclude the trial within one month positively without fail.

JUDGE

Nasim/P.A