

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application S-713 of 2024

Sumair
vs.
The State

For the Applicant : Mr. Abdul Aziz, Advocate
Date of hearing : 04.07.2024
Date of announcement : 04.07.2024

ORDER

Agha Faisal, J. (1) Urgency granted. (2, 3 & 4) This matter pertains to pre-arrest bail, in respect whereof F.I.R. 129 of 2024 was registered on 03.04.2024 before P.S. Sakrand District Shaheed Benazirabad, citing offence/s under Section/s 324, 337-H(ii), 504, 147, 148, 149 P.P.C.

2. Learned counsel submits that the applicant surrendered before the Court of the 2nd Additional Sessions Judge, Shaheed Benazirabad, however, vide order dated 29.06.2024, in Anticipatory Bail Application 686 of 2024, the applicant's application for pre-arrest bail was dismissed, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, reproduction whereof is eschewed herein², it is observed as follows:

a. The order dated 29.06.2024 rendered by the 2nd Additional Sessions Judge Shaheed Benazirabad carefully catalogs the pertinent facts and reasons for holding that the applicant is disentitled to bail. The operative constituent thereof is reproduced herein below:

"02. The gist of the FIR lodged by the complainant Muhammad Khalid son of Abdul Rehman Khanzada at police station Sakrand on 03-04-2024 stating therein that in the year 2022 he had registered case against his brothers applicant Abdul Nasir and others at P.S Mari Jalbani and due to filing of transfer application filed by him in said case before Honourable High Court of Sindh, Circuit Court, Hyderabad, the accused Abdul Nasir and Sumair Ali were annoyed with him. On 03-04-2024 at morning time the complainant along with his brother Muhammad Farhan after visiting lands were going to their house and at about 08:00 A.M reached at Nakur Shakh mori, National Highway where they saw that on three motorcycles each namely Abdul Nasir armed with

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

repeater, Nadir Ali having stick, Zeeshan, Sumair Ali armed with repeaters, Sajid Ali armed with pistol, Umair having iron rod, Malhaar having stick, Niaz Ali having stick and Kamran armed with pistol came there in front of complainant party and by using filthy language threatened that they will not spare complainant party, in meanwhile applicant/accused Abdul Nasir made straight fire from his Repeater upon the brother of complainant namely Muhammad Farhan with intention to commit his murder which hit on his left leg while applicant/accused Sumair Ali fired from his Repeater with intention to commit murder upon the brother of complainant namely Muhammad Farhan which hit on his right leg who fallen down on ground by raising cries and blood was oozing while remaining accused persons also made aerial firing for harassment on which complainant party raised cries which attracted to the locality persons, on which accused persons escaped from spot on their motorcycles by using filthy language towards town Sabu Rahu. Thereafter complainant took his injured brother and brought him at P.S Sakrand, obtaining letter for treatment and shifted him at Taluka hospital, Sakrand where from he was referred to PMCH, Nawabshah, where his brother was under treatment and then complainant appeared at P.S Sakrand and lodged instant FIR, hence this pre-arrest bail applications of applicants/accused.

03. Learned counsel argued that applicants/accused are quite innocent and they have not concerned with the commission of offence as alleged against them; that the FIR is delayed for about one day, for which no plausible explanation is given by the prosecution which at the very outset indicates that the FIR is lodged after due deliberations and consultation; that there is old enmity in between the parties therefore the complainant has falsely involved the applicants/accused, otherwise the complainant by taking advantage of one and same family has implicated the applicants/accused as the applicants /accused are real brothers of each other; that apart from this, the applicant/accused Sumair has also filed an application U/s 22-A(6)(i) & (iii) Cr.P.C against the complainant party and such matter was disposed off with direction U/s 155 Cr.P.C; that the alleged injuries as shown by the complainant against the applicants/accused are managed injuries being self-suffered in order to bow down them so that applicants/accused may come on their terms; that only the general allegations are against the present applicants/accused and there is no any independent ocular as well as corroborative evidence placed against the applicants/accused regarding the commission of offence; that the alleged place of incident is populated area but neither any independent person had witnessed regarding the alleged incident which makes the prosecution case fit for further enquiry; that in all there is no evidence against the applicants/accused mere their names appears in FIR which have been given due to grudge; that there is no tangible evidence connecting to the applicants/accused in the commission of offence, but the complainant malafidely concocted this frivolous story and has implicated the applicants in this false case; He prayed that earlier interim pre-arrest bail granted to the applicants/accused may be confirmed on the same terms and conditions. During course of arguments learned counsel submitted certified copy of Illegal Dispossession Complaint No.03/2024, certified copy of order dated 27-02-2024 in Cr. Misc: Application No.306/2024 Re-Sumair v/s DIGP Shaheed Benazir Abad U/s 22-A 6(i) & (iii) Cr.P.C, copy of provisional Medical Legal Certificate of applicant/accused Sumair, photocopy of FIR in crime No.29/2022, copy of office order of Directorate General Health Services Sindh, Hyderabad dated 17-05-2024 for constitute Special Medical Board to examine alleged injured Muhammad Farhan.

04. Learned A.D.P.P for the state, duly assisted by the learned counsel for complainant has vehemently opposed for confirmation

of bail of applicants/accused on the grounds that applicants/accused are nominated in the F.I.R with their specific roles and witnesses in their 161 Cr.P.C statements have supported version of complainant, that there is dispute between the parties over landed property, and such matter is pending before Hon'ble Court, hence the applicants/accused annoyed and attacked upon the complainant party and caused fire arm injuries to the brother of complainant which is duly supported in the medico legal certificate and nature of injury No.1 is declared as ghayr-e-Jaifah Mutalahimah U/s 337-F(iii) PPC and nature of injury No.2 is declared as ghayr-e-Jaifah Damiyah, as opined by the medical officer, hence section 324 PPC is fully attracted against them, so applicants/accused are not entitled for concession of confirmation of pre-arrest bail which is an extra ordinary relief to be granted with due care and caution. Learned counsel for complainant during course of arguments submitted photocopy of FIR in crime No.29/2022, photocopy of provisional and final medico legal certificates of injured Muhammad Farhan, 05 photographs of injuries caused to injured person and prayed for dismissal of instant bail applications of applicants /accused being meritless.

05. From the careful perusal of the facts of present case and gone through material with the able assistance of learned counsel for parties, admittedly there is landed dispute between both parties and such transfer application in a case of illegal occupation is subjudiced before Hon'ble Court. Learned counsel for applicants /accused raised plea that there is one day delay in lodging FIR which is unexplained by the complainant. In this regard from perusal of FIR it is quite clear that alleged incident happened on 03-04-2024 at 08:00 A.M while complainant had promptly lodged the FIR against accused persons on same day viz; 03-04-2024 at 1610 hours meaning thereby within 08 hours after incident and shifting the injured person at PMCH, Nawabshah, he appeared at police station Sakrand for lodgment of FIR, so the contention of learned defense counsel at this stage does not carry weight. Furthermore learned counsel raised another plea that there are general allegations of causing fire arm injuries to the brother of complainant even such injuries are self-suffered, hence on this score alone the applicants/accused may be admitted on pre-arrest bail. In this regard from perusal of FIR no doubt the role of some of the applicants/accused are general in nature except the role of applicants namely Abdul Nasir and Sumair who allegedly made straight fires from their Repeaters which hit on the left and right leg of injured person while medico legal certificate also confirms such fire arm injuries and opined the nature of injury No.1 as ghayr-e-Jaifah Mutalahimah U/s 337-F(iii) PPC and nature of injury No.2 is declared as ghayr-e-Jaifah Damiyah U/s 337-F(i) PPC. Furthermore the arrival of injured person in hospital has been shown on the same day of incident viz; 03-04-2024 at 09:30 A.M and two fire arm injuries were sustained by him and per FIR both injuries were specifically attributed towards applicants/accused Abdul Nasir and Sumair, hence to this extent the contention of learned defense counsel does not carry weight as both accused at this stage cannot claim for grant of their pre-arrest bail, however per FIR the role assigned to remaining applicants/accused is general in nature, as such their role prima facie of silent spectators which requires for further enquiry into matter contemplated U/s 497(ii) Cr.P.C. Learned defense counsel further took plea that applicant/accused Abdul Nasir has challenged the medical certificate of injured person and such Special Medical Board have been constituted to consider the genuineness of fire arm injuries allegedly sustained by the injured, in this regard per available record applicant Abdul Nasir has filed such application before the Director General Health Services Sindh Hyderabad dated 17-05-2024 but till yet no any opinion has been brought on record by the applicant nor received before

learned Magistrate, hence at this stage applicant/accused Abdul Nasir and Sumair cannot be exonerated from the allegations of complainant regarding fire arm injuries to the injured person, hence the contention of learned defense counsel at this stage does not carry weight, however the same would be considered at the time of receiving opinion from Special Medico Board and recording the evidence of complainant and injured person at trial stage, hence prima facie ingredients of section 324, 337-F(iii) PPC attracted to the case of accused Abdul Nasir and Sumair who have failed to make out their case within the ambit of section 497 (ii) Cr.P.C even pre-arrest bail is an extra ordinary relief which cannot be granted unless person seeking it satisfies conditions specified U/s 497(2) Cr.P.C and establish existence of reasonable grounds leading to believe that he is not guilty of offence alleged against him and there are sufficient grounds warranting further enquiry as held by the Honourable Supreme Court of Pakistan in case law reported in (2015 SCMR page 1394).

06. Keeping in view the above discussed facts, position and circumstances, I am of the humble opinion that there is sufficient material available on record which, prima facie, connects the applicants/accused Abdul Nasir and Sumair causing fire arm injuries to the brother of complainant Muhammad Farhan on his left and right leg. Accordingly, the pre-arrest bail to the extent of applicants/accused Abdul Nasir and Sumair is hereby dismissed and interim bail earlier granted to them, is hereby re-called, whereas interim pre-arrest bail granted to the remaining applicants/accused namely 1.Sajid Ali, Umair, Nadir Ali, Zeeshan, Kamran, Malhaar, and Niaz Ali is confirmed on the same terms and conditions with direction to join investigation/trial, without fail. However trial court is at liberty to cancel the bail of co-accused persons, if they misuse the same at any stage of trial without referring the matter to this court for legal action.”

- b. Learned counsel pleaded entitlement to the concession of pre-arrest bail on the premise that wrong offences have been cited in the FIR; it is a private dispute and ought not to have been agitated in the criminal realm in the first instance; and finally invoked the rule of consistency on the premise that other co-accused have been granted bail.
- c. Whether or not the offences cited in the FIR are proven or not is a matter for the trial court to decide; for the present purposes nothing could be discerned to disregard the same. The existence of a private dispute does not preclude the possibility of criminal action, however, the existence and or effect of the same is another issue before the learned trial court. Finally, the case of the applicant is manifestly different from other accused having been granted the benefit of bail as the trial court order clearly states the distinction between the two, inter alia, that while the allegations against the other accused are generic those against the applicant are specific.
- d. Learned counsel has been unable to demonstrate any infirmity with the order, denying pre arrest bail to the applicant, rendered by the learned subordinate Court/s particularized supra³.

4. The Supreme Court⁴ has maintained that grant of anticipatory bail, to an accused required in a cognizable / non-bailable offence, is

³ Per *Saleem Akhtar J.* (as he then was) in *Nasir Muhammad Wassan vs. The State* reported as 1992 SCMR 501.

an extraordinary judicial intervention in an ongoing or imminent investigative process as it interferes with the mechanics of investigation and prosecution. It has also been observed that while the statute does not expressly provide for such a remedy, it has always been recognized in our jurisprudence⁵, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honor from the humiliation of arrest, intended for designs sinister and oblique⁶.

It has, however, been illumined that this remedy, oriented in equity, may not be invoked in every criminal case⁷, *prima facie* supported by material and evidence, constituting a cognizable / non-bailable offence and warranting arrest, which is an inherent attribute of the dynamics of the criminal justice system with a deterrent impact; it is certainly not a substitute for post arrest bail⁸.

5. In the present facts and circumstances the learned counsel has been unable to set forth a *prima facie* case for consideration of judicial refuge and it has not been demonstrated that incarceration is intended for designs extraneous, including harassment⁹ and humiliation¹⁰, and *mala fide*¹¹.

6. In view hereof it is the assessment of this Court that the learned counsel for the applicant has been unable to make out a fit case¹² for grant of the extra ordinary¹³ concession of pre-arrest bail, hence, the present application is hereby dismissed. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

⁴ Per Qazi Muhammad Amin J. in *Ghulam Farooq Channa vs. The Special Judge ACE (Central I) Karachi & Another (Criminal Petition 169 of 2020)*.

⁵ Per Cornelius J. in *Hidayat Ullah Khan vs. The Crown* reported as *PLD 1949 Lahore 21*.

⁶ *Abdul Aziz Memon vs. The State* reported as *2020 SCMR 313*.

⁷ *Gulshan Ali Solangi vs. The State* reported as *2020 SCMR 249*.

⁸ *Rana Abdul Khaliq vs. The State* reported as *2019 SCMR 1129*.

⁹ *Murad Khan vs. Fazle Subhan & Another* reported as *PLD 1983 Supreme Court 82*.

¹⁰ *Ajmal Khan vs. Liaqat Hayat & Another* reported as *PLD 1998 Supreme Court 97*.

¹¹ *Mukhtar Ahmed vs. The State* reported as *2016 SCMR 2064*.

¹² *Zia Ul Hassan vs. The State* reported as *PLD 1984 Supreme Court 192*.

¹³ *Muhammad Sadiq & Others vs. The State* reported as *2015 SCMR 1394*.