

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Bail Application No.S-709 of 2024

Imam Bux  
vs.  
*The State*

For the Applicant : Mr. Nadir Ali Lund, 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.24 of 2024 was registered on 20.05.2024 before P.S. Sekhat District Matiari, citing offence/s under Section/s 324, 504 & 337-F(iii) P.P.C.

2. Learned counsel submits that the applicant surrendered before the Court of the Additional Sessions Judge, Matiari, however, vide order dated 29.06.2024, in Cr. Bail Application 371 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 sifting<sup>1</sup> through the material placed before the court, reproduction whereof is eschewed herein<sup>2</sup>, it is observed as follows:

a. The pertinent facts and grounds for denial of pre-arrest bail to the applicant is apparent from the order dated 29.06.2024, pertinent excerpt thereof are reproduced hereinbelow:

*"4. I have gone through the record. During the course of arguments, learned advocate of applicants/accused pointed out that the mother of the applicants/accused No.1 & 2 filed F.C Suit No.48/2023 before the competent forum against one Sajjan Babar; that on 05.03.2024 the complainant and said Sajjan made firing upon applicant's party and caused injuries to them; that the complainant was convicted in one FIR bearing crime No.33/2021 PS Sekhat lodged by applicant/accused No.1, hence the applicants/accused have been falsely implicated in this case. He prayed for confirmation of bail of applicants/accused.*

*5. The learned ADPP for the State opposed the bail application with vehemence. He pointed out that the applicants/accused are nominated in the FIR with specific*

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

<sup>2</sup> *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.

*role that they while carrying deadly weapons intercepted the complainant party and attacked upon them, consequently the complainant namely Ameen Muhammad sustained firearm injuries at the hands of applicants/accused; that delay in lodgment of FIR is well explained; that offences u/s 337-F(iii) PPC is not bailable, therefore, bail may be dismissed.*

6. *It is pertinent to mention here that on 26.06.2024 accused Gul Hassan filed application wherein he disclosed that due to attack of complainant party upon them, co-accused Muhammad @ Saleem Babar died.*

7. *I have gone through the record very carefully and minutely. As per FIR the allegations against the applicants/accused are of general nature except applicants/accused Imam Bux and Muhammad @ Saleem. Applicants/accused Aslam, Gul Hassan and Wahid Bux were armed with sticks, while on perusal of final MLC of the injured Ameen Muhammad, it reveals that he received the firearm injuries; hence the case against the applicants/accused Aslam, Gul Hassan and Wahid Bux at this stage requires further enquiry. So far as the case against the applicant/accused Imam Bux is concerned, he was assigned specific role of firing at vital parts of the injured/complainant Ameen Muhammad. The said injuries were declared by the MLO as punishable u/s 337 F(iii) PPC. The injuries of the injured were noted by the duty officer on the very day of incident under a mashirnama. The ocular version is supported by medical evidence. Ingredients of section 324 PPC are prima facie attracted in the case and said offence falls within prohibitory clause of section 497 Cr.P.C.*

8. *In view of above discussion, the applicant/accused Imam Bux is not entitled for benefit of concession of pre-arrest bail, hence his bail application is dismissed, while pre-arrest bail application of applicants/accused Aslam, Gul Hassan and Wahid Bux is confirmed on the same terms and conditions.”*

- b. Learned counsel pleaded entitlement to the concession of pre-arrest bail on the premise that the presence of section 324 PPC etc ought to be disregarded and only the sections qualifying the bail as non-prohibitory may be considered. The ground of delay in filing the FIR is also invoked and finally it is submitted that other persons implicated in the same FIR have already been granted bail, hence, the rule of consistency is invoked.
- c. The order of the Trial Court demonstrates that the allegations against certain other accused were of a general nature, however, the same was not the case of applicant. The distinction has been duly elaborated by the learned trial Judge and merits no further repetition. The order also reveals that delay in filing the FIR has also adequately been explained and nothing has been demonstrated before this Court to consider otherwise. It is an admitted fact that cited offences fall within the prohibitory clause and no case has been set-forth to disregard the same.

d. Learned counsel has been unable to demonstrate any infirmity with the orders, denying pre arrest bail to the applicant, rendered by the learned subordinate Court/s particularized supra<sup>3</sup>.

4. The Supreme Court<sup>4</sup> has maintained that grant of anticipatory bail, to an accused required in a cognizable / non-bailable offence, is 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 jurisprudence<sup>5</sup>, 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 oblique<sup>6</sup>.

It has, however, been illumined that this remedy, oriented in equity, may not be invoked in every criminal case<sup>7</sup>, 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 bail<sup>8</sup>.

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 harassment<sup>9</sup> and humiliation<sup>10</sup>, and *mala fide*<sup>11</sup>.

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 case<sup>12</sup> for grant of the extra ordinary<sup>13</sup> 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

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

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

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

<sup>6</sup> *Abdul Aziz Memon vs. The State* reported as 2020 SCMR 313.

<sup>7</sup> *Gulshan Ali Solangi vs. The State* reported as 2020 SCMR 249.

<sup>8</sup> *Rana Abdul Khaliq vs. The State* reported as 2019 SCMR 1129.

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

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

<sup>11</sup> *Mukhtar Ahmed vs. The State* reported as 2016 SCMR 2064.

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

<sup>13</sup> *Muhammad Sadiq & Others vs. The State* reported as 2015 SCMR 1394.