

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

Criminal Bail Application No.S-733 of 2024

Farhan Ali

vs.

The State

For the Applicant : Mr. Bashir Ahmed Almani,
Advocate

Date of hearing : 09.07.2024

Date of announcement : 09.07.2024

ORDER

Agha Faisal, J. (1) Urgency granted. (2, 3 & 4) This matter pertains to pre-arrest bail, in respect whereof F.I.R.178 of 2023 was registered on 06.11.2023 before P.S. Talhar District Badin, citing offence/s under Section/s 324, 337-A(i), 337-F(i), 506(ii) & 504 P.P.C.

2. Learned counsel submits that the applicant surrendered before the Court of the Sessions Judge, Badin, however, vide order dated 14.11.2023, in Criminal Bail Application 2025 of 2023, 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 operative paragraphs of the order of the learned Trial Court rejecting the bail is reproduced herein below:

"5. The applicant/accused is nominated in FIR with specific role of causing fire arm injuries to complainant Irfan Ali and Ali Murtaza. Applicant/ accused has repeatedly fired at uncle of complainant Ali Murtaza. As per provisional medico legal certificate, injured Ali Murtaza has received 04 fire arm injuries which have been kept reserved and final medico legal certificate has not yet been issued. The witnesses in their statements recorded under section 161 Cr.P.C have fully supported the version of FIR. The offence under section 324 PPC carries punishment for 10 years hence falls under prohibitory clause of section 497 Cr.P.C.

6. Moreover, in the instant case, the applicant/accused has failed to establish any malafide, enmity or ill will against

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.

the complainant and witnesses to falsely involve him in this case. The pre-arrest bail is an extraordinary relief to be granted only in extraordinary circumstances to protect innocent persons against victimization through abuse of law for ulterior motives. Bail before arrest could not be granted unless the person seeking the same satisfied the conditions specified in section 498 Cr.P.C and has to show that his arrest is being sought for ulterior motives, particularly on the part of police to cause irreparable humiliation, disgrace and dishonor him. Accused seeking pre-arrest bail should further establish that he has not done any act which would disentitle him to a discretionary relief. In the case in hand, the applicants/ accused are nominated in the FIR with specific allegations. In this regard reference is made to the case of "Maqbool Ahmed Mahessar and others Vs National Accountability Bureau (NAB) through Chairman and others" reported as 2021 SCMR-1166 wherein it is held by the Honourable Supreme Court of Pakistan as under:-

"Similarly, grant of pre-arrest bail in a cognizable/non-bailable offence is a remedy, most extraordinary in the nature of judicial protection, extended by diverting usual course of law for the sole purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique, the protection is based upon equity and cannot be extended in every run of the mill criminal case prima facie founded upon incriminatory evidence, warranting custody of investigative purposes".

7. Hence, for the fore-going reasons I am of the humble view that sufficient material is available on record to prima facie connect the applicant/accused with the alleged offence, as such, he is not entitled for concession of extraordinary relief under section 498 Cr.P.C at this stage. Accordingly, his bail application is hereby dismissed. Consequently, order dated 10-11-2023 granting interim pre-arrest bail to the applicant/accused is hereby recalled."

- b. It is also on record that the same applicant had filed earlier Criminal Bail Application before this Court, vide Criminal Bail Application S-1274 of 2023 the same was dismissed by this Court vide order dated 01.07.2024. The order is reproduced herein below:

"On the last date of hearing, the following order was passed and a fixed date was given:

On the last date of hearing, learned counsel for the applicant sought time for preparation and as an indulgence and by way of last chance the matter was adjourned to 02.05.2024. Today, associate of learned counsel for the applicant is present and states that Mr. Bashir Ahmed Almani, learned counsel for the applicant is unwell. However, it is made clear that in the event that Mr. Bashir Ahmed Almani does not argue this matter on the next date then his associate Mr. Nizamuddin Vighio, who has also signed the vakalatnama, shall argue the matter. No further adjournment will be granted under any circumstances and in the event if the learned counsel for the applicant fails to proceed with this matter, the interim bail earlier granted to the applicant will automatically be recalled as it appears that delaying tactics are being issued on part of learned counsel for the applicant.

To come up on 03.06.2024

This matter was called earlier and in the absence of applicant / learned counsel it was kept aside and called once again after the adjustment of the board. Today, the applicant and his counsel remained unrepresented without intimation or justification. Interim bail granted herein stands recalled. Surety is forfeited. This criminal bail application is dismissed accordingly for non-prosecution."

- c. Learned counsel submits that applicant was not served with notice of Court for him to be present in Court on the earlier date, when bail was dismissed in default, and further that dismissal for non-prosecution is illegal per se as it finds no mention in the Cr.P.C.
- d. In so far as the default in appearance is concerned, no cogent reason has been articulated in respect thereof. It is the duty of an applicant to remain vigilant and no case is made out to sanction the indolence of the applicant. Be that as it may, there is no question of resuscitation of the earlier bail application so this issue is in any event moot.
- e. Adverting to the facts and circumstances pertinent hereto, the record demonstrates that the applicant is nominated in FIR with specific role of causing firearm injuries to the victims. The provisional medico-legal certificate appears to cement the prosecution's case and as do the witnesses statements. It is also apparent that the offence falls under prohibitory clause of section 497 Cr.P.C.
- f. 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 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.

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

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.

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

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*.