

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail Appl. No.S-175 of 2023***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. *For orders on O/objection at flag-A*
2. *For hearing of bail application.*

**04.09.2023**

Mr. Jamshed Ahmed Faiz, Advocate for applicants in Crl. Bail Application No.S-175 of 2023.

Mr. Ubedullah K. Ghoto, Advocate for complainant.

Syed Sardar Ali Shah, Addl.P.G.

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**ORDER**

The applicant, Zulfiqar Ali Kalwar, was marked as absent on the previous date, specifically on 21-08-2023. The situation remained unchanged, and the matter was adjourned to the present day. It was directed that if the applicant failed to appear before this court, his bail application would be dismissed.

2. Learned counsel for applicant/accused Zulfiqar Ali submits that the police have arrested the applicant for another crime at the instance of the complainant party of this case; therefore, he is unable to attend the Court. He submits that the absence of the applicant/accused is not deliberate or willful, but it is beyond his control. He, however, requests for exemption of absence of applicant/accused and submits that the applicant has a good *prima facie* case; therefore, the pre-arrest bail application of the applicant accused be heard and decided in his absence.

3. Learned Additional Prosecutor General, assisted by learned counsel for the complainant, submits that the presence of the applicant in pre-arrest bail is very much essential. He further submits that the Court

cannot, in the absence of the applicant, travel further into the case and examine the merits of the case.

4. I have heard learned counsel for parties and scanned the material available on record. From the perusal of the record, it appears that on 21.08.2023, applicant/accused Zulfiqar Ali Kalwar remained absent; however, counsel for the applicant stressed to hear his arguments on merits in the absence of the applicant/accused though the applicant/accused after the grant of interim pre-arrest bail remained absent. As per learned counsel, the applicant is confined in jail for another crime registered by the present complainant. The concept of pre-arrest bail has undergone an evolutionary process and has now acquired a clear structure . Section 498-A of the Code of Criminal Procedure (Cr.P.C.) currently governs the fundamental criteria for seeking pre-arrest bail. Now, for the sake of clarity, Section 498-A of the Criminal Procedure Code (Cr.P.C.) is reproduced below:

*"498-A. No bail to be granted to a person not in custody, in Court or against whom no case is registered, etc.: Nothing in section 497, or section 498 shall be deemed to require or authorize a Court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is not present in Court or against whom no case stands registered for the time being and an order for the release of a person on bail, or direction that a person be admitted to bail shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction."*

5 . A perusal of section 498-A of the Code of Criminal Procedure (Cr.P.C.), it becomes evident that the accused's appearance before the Court is a prerequisite for obtaining pre-arrest bail, and without his presence, pre-arrest bail cannot be granted. In this context, the reference

can be made to the case of "Shazaib and others v. The State and others" (PLD 2021 SC 886). The relevant portions of the judgment is reproduced as under:-

*“8. It is also clarified that ad interim bail granted in a pre-arrest application on the first hearing is to simply ensure that the petitioner is present on all the subsequent dates of hearing in the pre-arrest bail matter. Petitioner's presence is, therefore, required throughout the proceedings of the pre-arrest bail petition and the fact that he appeared on the first date when ad interim bail was granted does not in any manner lessen the rigours of section 498-A, Cr.P.C. or absolve the responsibility of the accused from appearing in person before the court”.*

6. It is now firmly established that when a statute prescribes a specific manner for the performance of an action, it must be adhered to strictly, without deviation. Any attempt to carry out the action in a different manner would be deemed invalid. In support of this principle, reference has been made to the case of "Attaullah Khan v. Ali Azam Afridi and others" (2021 SCMR 1979).

7. The applicant may have got a good prima facie case on merits, but it is clarified that ad-interim bail was granted to the applicant accused on the first hearing, and he was required to ensure his presence on each and every date of hearings, but he failed to do so. Accordingly and in view of the above, instant bail application is dismissed only on the ground of lack of presence of applicant/accused in Court.

J U D G E

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