

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1424 of 2024

<i>Date</i>	<i>Order with Signature of the Judge</i>
Applicant	: Qadeer Hussain Shah son of Muhammad Hussain Shah (on bail) through Mr. Waseem Iqbal, Advocate.
Complainant	: Nemo.
The State	: Ms. Rubina Qadir, DPG, Sindh along with SIP Javed Iqbal of P.S North Nazimabad, Karachi.
Dated	: 02 nd October, 2024.

ORDER

Muhammad Saleem Jessar, J.:- Through instant bail application, applicant Qadeer Hussain Shah son of Muhammad Hussain Shah seeks his admission to pre arrest bail in Crime No. 327/2020 registered with Police Station North Nazimabad, Karachi under sections 489-F PPC. The case had been challaned which is now pending adjudication before the Court of Civil Judge & Judicial Magistrate-VII, Karachi-Central (trial Court) vide Criminal Case No. 1141/2021 (re-the State Versus Qadeer Hussain Shah). The applicant had filed anticipatory bail before the Court of Sessions which subsequently was assigned to Addl. Sessions Judge-VII/MCTC, (vide Criminal Bail Application No.1064/2024) who after hearing the parties, declined to grant his application vide his order dated 26.06.2024; hence, instant bail application has been maintained.

2. The facts of the case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

3. SIP Javed Iqbal of P.S North Nazimabad, Karachi is present and returns process unserved on the pretext that last night he had made contact with the complainant via phone and he promised to appear; however, no one is in attendance on his behalf nor intimation is received. Process returned, taken on record.

4. Learned counsel for the applicant submits that accused filed Criminal Bail Application No.10 of 2021 before the trial Court / 6th Civil Judge & Judicial Magistrate, Karachi (Central) which by means of order dated 01.02.2021 was declined (available at page-55 of the Court file). He, therefore, filed Criminal Bail Application No.711 of 2021 before the Court of Sessions which later was assigned

to 7th Addl. Sessions Judge / MCTC-2, Karachi (Central), who, after hearing the parties as well as Prosecutor on 06.04.2024, granted him bail (available as Annexure-C at page-49 of the Court file). After furnishing surety, the accused was released; however, he was told by his lawyer that case against him has been disposed of; hence, he had gone to his home town Lahore; however, as and when he learnt that case against him is still pending adjudication, he filed Criminal Bail Application 1064 of 2024 before the Court of Sessions which subsequently was assigned to learned 7th Addl. Sessions Judge-MCTC-02, Karachi (Central) whereby he was admitted to ad-interim pre-arrest bail on 18.01.2024; however, after hearing the parties, ad-interim bail granted to applicant on 18.01.2024 was recalled by way of order dated 26.06.2024. He, therefore, submits that Court below has declined the request so made on the ground that he remained fugitive from the law; however, said instance taken by the Addl. Sessions Judge, carries no weight as the applicant himself had surrendered before the Court of law, which shows he had no wrong intention to abscond away but to surrender. Learned counsel further submits that many of the witnesses have been examined but the complainant and his witnesses have yet not been examined; besides, the amount involved in the case is meager one and the punishment provided by the law for the offence punishable to section 489-F PPC is not more than three years. In support of his contention, learned counsel places reliance upon the cases of *TUFAIL AHMED V/S THE STATE (2015 P.CR.L.J. 51)*, *ABDUL RASHEED V/S THE STATE & ANOTHER (2023 SCMR 1948)*, *MUHAMMAD ASLAM V/S THE STATE & OTHERS (2016 SCMR 1520)*, *NOMAN KHALIQ V/S THE STATE & ANOTHER (2023 SCMR 2122)* and case of *IKRAM-UL-HAQ V/S RAJA NAVEED SABIR & OTHERS (2012 SCMR 1273)*.

5. Learned Deputy P.G, Sindh appearing for the State, opposes the bail application on the ground that applicant by remaining fugitive has misused the concession, therefore, is not entitled for bail; however, she could not controvert the fact that applicant surrendered voluntarily by filing anticipatory bail before the Court of Sessions as well as this court; besides, he was all along on bail granted to him by the Addl. Sessions Judge on merits.

6. The complainant inspite of service has chosen to remain absent.

7. Pursuant to directions contained under previous order, the trial Court / Civil Judge & Judicial Magistrate-VII, Karachi (Central) has submitted progress report in respect of the captioned case which reveals that charge against accused was framed on 10.07.2021 and later some official witnesses namely PW-01 Bank official from HBL, PW-02/author of the FIR namely SIP Ghulam Mustafa were

examined on 15.09.2021. Again on 08.12.2021 partial examination-in-chief of I.O was recorded; however, on release of accused from jail and his subsequent disappearance, he was declared proclaimed offender, therefore, case against accused was kept on dormant file vide order dated 15.06.2022 and again he appeared before the trial Court on 13.05.2024 along with a copy of interim pre-arrest bail granted to him by the Court of 7th Addl. Sessions Judge, Karachi (Central). Report further reveals that inspite of hectic efforts and process, the complainant and his witnesses have not been served; however, his counsel appeared and sought condonation of his absence.

8. Heard and perused the record. Since, the amount involved in this case is Rs.900,000/- which is not huge one; besides, accused was all along on bail granted to him by the Court of Addl. Sessions Judge; however, he remained fugitive for a particular period and again surrendered before the court below by filing anticipatory bail application. Since the applicant was granted bail by the Addl. Sessions Judge on merits and later he after remaining absconder for some time, surrendered voluntarily before the court below as well as this court, thereby has put himself completely upon the mercy of court. Such conduct on the part of applicant shows, he had no wrong intention to abscond away.

9. It is settled principle of law that mere absconsion is no ground to intercept the bail to an accused if otherwise accused has got a good case on merits. Reliance can be placed upon the case of *MITHO PITAFI Versus THE STATE* (2009 SCMR 299). As far as, merits of the case are concerned, applicant was granted post arrest bail by the Addl. Sessions Judge on merits and later due to his little a bit absconsion it was recalled. In case, applicant may be put behind the bars, tomorrow again he will be released on bail, therefore, no technical or legal purpose will be served by putting him in jail. Reference can be had from the case of *MUHAMMAD RAMZAN Versus ZAFARULLAH and another* (1986 SCMR 1380). In instant case, applicant was all along on bail granted to him by the Addl. Sessions Judge; besides, he was not arrested or forced to surrender but he had surrendered voluntarily by putting himself completely upon mercy of the Court; hence, he deserves to be admitted to extraordinary relief. In case of *HASSAN ALI RAJA Versus The STATE and another* (2020 P.Cr.L.J 931) learned Bench of Islamabad High Court, while dealing with identical issue, has held in para-11 of said order, as under;_

“11. There should be some difference between proclaimed offender, who had remained subject of raids, exercise to trace whereabouts, search by investigating agency and finally caught, arrested due to efforts by the police or either during proceedings on the direction of the Court, and one

who himself voluntarily surrenders before the Court of law, put himself to the mercy of the Court, seeks protection of the Court and present himself to seek assistance of the Court/access to justice. It amounts to denial an individual to access to justice if some benefit is not extended to the latter. In response to his volunteer act as compared to the forceful arrest by the police/agency. He has placed/put confidence upon the administration of Criminal Justice System. This Court believes that one who wants to avail protection of criminal justice system, he should not be discouraged and penalized for his good deed because finally the matter is to be dealt with by the Court of competent jurisdiction on merits."

10. It is settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Since, the applicant was granted bail on merits and later it was recalled due to his little a bit absconsion; hence, looking to his conduct, his case requires further enquiry. Reference can be had from the case of *ABDUL QADIR Versus THE STATE (2004 P.Cr.L.J 285)*. In the circumstances and in view of dicta laid down by learned Bench of Islamabad High Court in case of *HASSAN ALI RAJA (Supra)* as well as cases of *MITHO PITAFI (Supra)* and dicta laid down in case of *MUHAMMAD TANVEER Versus The STATE (PLD 2017 SC 733)*, the case against applicant requires further enquiry within meaning of subsection (2) to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant Qadeer Hussian Shah son of Muhammad Hussain Shah on 28.06.2024 is hereby confirmed on same terms and conditions.

11. Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

12. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence till final decision of main case. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar