

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Bail Application No.S-123 of 2024
(*Abdul Haque Vs. The State*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 24-09-2024

Mr. Aziz Ahmed Laghari, advocate a/w applicant (on bail).

Mr. Dhani Bakhsh Mari, Assistant P.G a/w Investigating Officer Jahangir
Mustafa, P.S FIA Mirpurkhas

=

ORDER

Adnan-ul-Kareem Memon, J. The applicant/accused Abdul Haque, has filed the instant bail application under Section 498 of the Criminal Procedure Code (Cr.P.C.). This bail application is related to FIR No. 13/2024 registered under Section 462-(I) of the Pakistan Penal Code (P.P.C.) at P.S F.I.A Composite Circle, Mirpurkhas.

2. Previously, the applicant's bail plea was rejected by the learned trial court on the 08th of June, 2024, in Criminal Bail Application No. 678/2024. The court's decision was based on the premise that there was no evidence of malice on the part of the complainant in filing the case. The trial court emphasized that pre-arrest bail is an exceptional remedy that should only be granted in extraordinary circumstances to protect innocent individuals from being victimized through the misuse of the law for ulterior motives. The court further stated that pre-arrest bail cannot be granted unless all the conditions established by higher courts in this regard are met.

3. Learned counsel for the applicant submits that the prosecution case against the applicant is weak and based on malice. He argued that FIR (First Information Report) was filed late because the complainant, a HESCO official (electricity company), was upset about not receiving a bribe (illegal gratification). Learned counsel argued that the alleged offense does not violate Section 497 of the CrPC (Criminal Procedure Code), which deals with trespassing or intimidation. He added that the FIA officials were harassing the applicant and trying to humiliate him with a false arrest. Learned counsel submitted a copy of a paid electricity bill on 08 &

10 June, 2024 (page 43 & 45) as evidence that the applicant is a law-abiding customer. Learned counsel emphasized that the applicant is already attending the trial court hearings, so further detention would not be productive. Finally, learned counsel argued that the applicant is innocent and being targeted by the police because he refused to pay a bribe. He has proof of paying his bills and is attending court, so there is no reason to send him in jail.

4. The learned A.P.G in absence of learned D.A.G has opposed the confirmation of bail to the applicant and argued that the applicant is involved in stealing electricity by directly connecting to the L.T line. He argued that the applicant has failed to prove any malice on the part of the complainant (HESCO officials), or the FIA police and contended that the applicant did not provide any reason to suspect false implication and therefore he is not entitled to pre-arrest bail.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. Admittedly, the incident took place in April 2023 to April 2024 without specific time and blatantly reported on 18-04-2024 at 1945 hours, which is apparently a day time raid, where the availability of other persons of the locality cannot be denied, yet no independent person from the vicinity has been cited as the witness of the alleged occurrence. Section 462-I, PPC carries a punishment up to 03 years and fine; as such, the offense does not exceed the limits of the prohibition contained in Section 497 of Cr.P.C and in such eventuality, the superior Courts have extended grace by admitting the accused on bail by holding that where the offense does not fall under the prohibitory clause, grant of bail in such cases becomes a rule and refusal will be an exception. The case has been challaned and after the grant of ad-interim pre-arrest bail, the applicant is not alleged to have misused such concession. The case against the applicant, in the absence of any independent witness of the alleged incident, requires further inquiry as contemplated under sub-section (2) to Section 497, Cr.P.C. In the case of *Muhammad Tanveer v. The State* (PLD 2017 Supreme Court 733) the Apex Court while extending the grace,

granted bail and it will be appropriate to reproduce para-6 of the order, which reads as under:-

“6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation.”

7. The reasons assigned by the learned trial Court to decline bail based on the reasoning that applicant is not entitled to pre-arrest bail as this is extraordinary relief to be granted only to innocent persons. This approach prima facie is against the law and the principle set-forth by the Supreme Court on the analogy that the offense if does not fall within the prohibition contained in section 497(1) Cr.P.C, the benefit of bail can be extended in either circumstances i.e. post and pre-arrest bail. There is no hard and fast rule that the accused in a pre-arrest bail has to prove his innocence which is the function of trial Court after recording the evidence, as the Court has to tentatively asses the record whether prima facie connects the applicant or otherwise. The parameters set forth by the Supreme Court in pre-arrest bail under section 498 Cr.P.C are altogether different than the parameters in post arrest bail under section 497 Cr.P.C and it is difficult to prove malafide of the complainant and police in each and every case, which requires details deliberation and recording of the evidence; therefore, merely saying that the applicant failed to substantiate the malafide on the part of complainant and police is not sufficient to discard the plea of the applicant and to nonsuit and leaving him at the lurch so that he be victim of the police who are bent upon to hunt the applicant and then to humiliate the applicant and thereafter to produce him before the Court of law. If he has prima facie case, he could be enlarged on post arrest bail. Once a person is accused of a crime not falling within the prohibition, as contained in sub section (1) of section 497 Cr.P.C, then bail can be extended to him, if he is at all entitled under the law.

8. In such circumstances and in view of the above discussion as well as the dictum laid down by the Apex Court in the reported case

of *Muhammad Tanveer (supra)*, I am convinced that the applicant has made out *prima facie* case for grant of pre-arrest bail as such the interim pre-arrest bail already granted to the applicant by this court vide order dated:14-06-2024 is hereby confirmed on same terms and conditions. The applicant is directed to attend the trial court regularly and in the meanwhile trial court is directed to examine the complainant within one month. It is, however, mentioned that observations made hereinabove are of tentative assessment and shall have no bearing on the merits of the case.

JUDGE

"Ali Sher"