

find strength from the legal position that pre-arrest bail, *normally*, is granted on the ground of ***mala fide*** on part of the complainant or the police. To substantiate such claim, it is always the conduct and attitude of the accused which matters. Reference is made to the case of *Mukhtar Ahmed v.State & others* (2016 SCMR 2064) wherein it is held as:-

“2.....The said respondents had been admitted to pre-arrest bail by the High Court *primarily* upon the consideration that the offences allegedly committed by them did not attract the prohibitory clause contained in subsection (1) of section 497, Cr.PC. The High Court had failed to appreciate that the said consideration is hardly relevant to a case wherein what is sought is pre-arrest bail which is an extraordinary concession. This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local Police but not a word about this crucial aspect of the matter is to be found in the impugned orders passed by the High Court in the present case. ...”

Prima facie, the applicant / accused, having obtained *interim* pre-arrest bail has been avoiding his *appearance* before this Court though under very order (*interim bail grant order*) he is not only keeping the police away but has been enjoying his *life* which includes treatment as ***'Out-door patient/OPD'***. Such conduct of the applicant/ accused, I shall have to insist, is not worth appreciating rather cuts his claimed *plea* of malafide which, *otherwise*, is backbone for claiming ***pre-arrest bail***.

4. Without prejudice to above, the record reflects that this is bail before arrest and it has surfaced on record that applicant was neighbor and broker of real estate and there was sale of a flat. Accordingly, he received sale consideration, however failed to hand over the possession of flat and original file which is also available




with him. On last hearing he was categorically offered by counsel for applicant that either applicant may return the original file or return the amount; whereas counsel for applicant was present on last hearing. Admittedly there is an outstanding of Rs.30,00,000/- and therefore this matter was adjourned with said two options/offers by the complainant (a *house-wife*) who, *prima facie*, has been deprived of her valuable money by taking advantage of *neighborhood*. The applicant / accused, *even*, not bothering to contest his bail *plea* on merits and even avoiding response to offer. Today again applicant's counsel is seeking time having knowledge that this bench will seize the day after tomorrow and there are only two days left to end present roster and counsel is seeking for one week. Such attitude, I am to add, appears to play with the Court *even* where (during proceedings) the offer (s) were made so as to ease the grievance of a **house hold** woman. I would also add here that *defrauding* innocents is not an *ordinary* offence but was / is required to be examined *differently*. Though in the instant case the *victim* is single soul but a woman who, finding no *hope*, even agreed for her *amount* too while parting with her claim from property; this couple with *referred* attitude of the applicant / accused, *prima facie*, disentitles him for claiming such *extra-ordinary* relief. I find strength for holding so from the case of Muhammad Ashfaque v. State (2015 SCMR 1716) wherein it is held as:-

“9. In ordinary course and in crimes of ordinary nature, such discretion is to be exercised in favour of the accused however, when ingenious contrived and designed methodology is pressed into service for defrauding a bulk of poor peoples through fraudulent means, would take out the case of such accused person from the ordinary principle where the discretion in granting bail by the court shall ordinary not to be exercised in a routine manner taking the matter leniently otherwise, the entire society would be corrupted through such acts of detestable nature.”

Accordingly, whatever has been discussed above, renders the bail plea to dismissal which is accordingly dismissed. Interim bail is recalled. I/O of the case shall ensure arrest of applicant in view of Nasarullah's case.

Dismissed.


JUDGE

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Disposed of Matter

1) For orders on MANO 7575/2021
(U/A)

2) For orders on MANO 7576/2021
(Ret. Surety)

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19/07/2021

Mr. Ubedullah Malik, Advocate for Surety.
Ms. Seema Zaidi, Addl. P.S.

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Urgent application stands dismissed as learned Counsel for the surety is unable to show availability of release of surety without accused surrendering himself.


Judge