

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Justice Ms. Tasneem Sultana.

Const. Petition No. D – 3193 of 2025

[Faisal Masih and another v. The State and others]

Petitioners : Faisal Masih son of Yousuf Masih and
Emmanuel son of Sardar Masih
through Mr. Shahbaz Sahotra,
Advocate.

Date of hearing : 17-07-2025

Date of order : 17-07-2025

ORDER

Adnan Iqbal Chaudhry J. - The office has raised an objection to the maintainability of the petition. The facts are that for an offence alleged under section 379 PPC, Petitioners were granted pre-arrest bail by the Sessions Court on 15-05-2025 with direction to cooperate in the investigation and join the trial. However, before the trial Court viz. the Court of Judicial Magistrate, the Petitioners and their counsel were called absent on 02-06-2025 and again on 01-07-2025. Therefore, the trial Court issued NBWs for the Petitioners' arrest. Counsel submits that the Judicial Magistrate did not have jurisdiction to issue NBWs for the Petitioners' arrest when they were on bail granted by the Sessions Court, thus a constitution petition for a writ of *certiorari* is maintainable. In our view, the submission is misconceived. NBWs for the Petitioners' arrest were issued by the trial Court not by way of re-calling bail but by exercising powers under section 90 read with section 204 Cr.P.C. to compel their appearance when they remained absent from the trial court. The distinction between a bail under sections 497 and 498 Cr.P.C and process issued under section 204 Cr.P.C. to compel the appearance of an accused before the trial court had been highlighted by the Supreme Court in *Sarwar v. The State* (2014 SCMR 1762). It was held that where process issued under section 204 Cr.P.C. is a warrant, bailable or non-bailable, the accused person may either apply for pre-arrest bail, or, upon his appearance

before the Court or having been brought before the Court, he may be required by the Court to execute a bond under section 91 Cr.P.C. for his future appearance, thereby obviating the requirement of bail for the warrant is meant only for procuring his attendance. The petition is therefore not maintainable and is dismissed in *limine*.

JUDGE

JUDGE

SHABAN*