

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Case No. **Crl. Misc. No.73505-CB/2023**

Muhammad Rafie vs **Ghaneem Aabir, etc.**

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
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- 13.03.2024 Mr. Javed Imran Ranjha, Advocate for the petitioner.
Ms. Nuzhat Bashir, Deputy Prosecutor General for the State along with Malik Muhammad Idrees, Additional Inspector General of Police (Investigation), Punjab, Lahore, Anoosh Masood, Senior Superintendent of Police (Investigation), Babar Joiya, Superintendent of Police (Investigation), Civil Lines Division, Lahore, Nasir Abbas, Deputy Superintendent of Police, Qadeer Ahmad, DSP (Legal), Shammas Tabraiz, S.I., Khalil Ahmad, S.I. and Imran Ahmad, S.I. with record of the case.
Raja Amanat Ali Khan, Advocate for and with Ghaneem Aabir (respondent No.1, identified by his learned counsel).
- Through instant petition filed under Section: 497 (5) Cr.P.C., Muhammad Rafie (petitioner/complainant of case) has challenged the *vires* of order dated: 02.11.2023 passed by learned Addl. Sessions Judge, Lahore whereby Ghaneem Aabir (respondent No.1/accused) was granted pre-arrest bail in case arising out of F.I.R. No.847/2023 dated: 12.06.2023 registered under Sections: 420, 468, 471 PPC read with Section: 58 of the Legal Practitioners and Bars Councils Act, 1973 at Police Station: Civil Lines, Lahore.
2. Briefly as per crime report (FIR) got recorded by the then Assistant Secretary, Punjab Bar Council, the Anti-Corruption Committee, Punjab Bar Council, while probing the matter came to the conclusion *vide* its order dated: 20.05.2023 that Raja Ghaneem Abir (present respondent No.1) is posing himself as an advocate without having legal justification and defrauding general public. As per computer record, such person was not enrolled in the office of Punjab Bar Council and he was illegally posing himself as an advocate and appearing in the Courts of law.
3. Learned counsel for the petitioner submits that respondent No.1 has been granted bail before arrest *vide* impugned order against the law as well as facts of the case, therefore, same is liable to be cancelled by setting aside the impugned order.
4. Learned counsel for respondent No.1 while supporting the impugned order submits that challan has been submitted in the court and there is no justification to recall the bail granted to the respondent No.1 at this stage.

5. Learned Deputy Prosecutor General while opposing the impugned order submits that allegation levelled against respondent No.1 has been established during investigation of the case and there was no justification to grant pre-arrest bail to respondent No.1; finally prays for setting aside the impugned order.

6. Arguments heard and available record has been perused.

7. It has been noticed that respondent No.1 is nominated in the crime report (FIR) with the specific allegation that he was not advocate but while posing himself as advocate, has committed fraud. Aforementioned allegation levelled against respondent No.1 has been established during investigation of the case and detail of some reported cases in which he appeared as advocate has been appended at pages No.9-12 of this petition as Annexure "B". Sufficient material is available on the record to connect respondent No.1 with the commission of alleged offences. It goes without saying that Advocate is such a trusted statutory entity that person comes to him, shares most confident and valuable issues of his/her life with him, hands over documents including valuable instruments along with fee to him/her but if he/she is not advocate, then it is not mere cheating with the clients/public-at-large and actual advocates but also with the courts where he/she appears while posing himself/herself as advocate. So, it is heinous/serious offence against the entire legal system of the country. Any *mala fide*, malice or *ulterior motive* on part of complainant or investigating agency could not be referred in the case. Pre-arrest bail is an extra-ordinary concession, which is meant for protecting innocent people and same is granted only and if reasonable grounds are existing on the record to show that accused is not guilty of the alleged offence rather the case is of further inquiry and furthermore intended arrest of the accused is an outcome of *mala fide*, malice and ulterior motive for humiliating him; in this regard, case of "**AHTISHAM ALI versus The STATE**" (2023 S C M R 975) can be safely referred and its relevant portion from its paragraph No.7 is hereby reproduced: -

7. *It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under section 497 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of **Rana Abdul Khaliq v. The State and others** (2019 SCMR 1129), this Court held that grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in*

cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427), this Court has discussed the framework and guidelines for granting bail before arrest under section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm. This Court laid down the following parameters for pre- arrest bail:-

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- (d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.”

So, respondent No.1 has been granted pre-arrest bail in the case against the settled principles of law on the subject as well as material available on the record and impugned order is perverse, capricious, arbitrary as well as fanciful and thus not sustainable in the eyes of law. It is by now also well settled that if bail has been granted to accused while ignoring sufficient material available against him on the record, then it is to be recalled; in this regard, guidance has been sought from the case of “**MUHAMMAD RAFIQUE versus The STATE and others**” (P L D 2022 Supreme Court 694) and its paragraph No.6 is hereby reproduced: -

“6. Although this Court ordinarily refrains from interfering with bail granting orders of the High Courts, it does not shy away to perform its constitutional obligation to set the matter right for the safe administration of criminal justice when a High Court has made such an order in derogation of some settled principle of law, or when the order is found to be perverse or arbitrary. In the present case, while allowing the bail petition of respondent No.2 and making the impugned order the High Court has acted against the above said settled principle of law, and its finding recorded on the basis of an unsubstantiated cross-version is perverse, that is, against the weight of the material available on record of the case. Therefore, we convert this petition into appeal and allow the same: the impugned bail granting order is set aside and the bail petition of respondent No.2 is dismissed. Respondent No.2 shall surrender before the trial court.”

Since respondent No.1 was not entitled to grant of pre-arrest bail (as discussed above), so submission of challan, in the peculiar facts and circumstances of the case, cannot place any embargo for cancellation of bail and case of “**AMIR FARAZ versus The STATE**” (2023 SCMR 308) can be advantageously referred in this regard.

8. In view of what has been discussed above, impugned order dated: 02.11.2023 passed by learned Additional Sessions Judge, Lahore, whereby Ghaneem Aabir (respondent No.1/accused person) has been granted pre-arrest bail in the case, is hereby set aside; resultantly, pre-arrest bail granted to respondent No.1 *vide* aforementioned impugned order is hereby recalled. With this observation, instant petition stands **allowed**. It is, however, clarified that observations made herein are just tentative in nature and strictly confined to the disposal of instant bail petition. Station House Officer, Police Station: Civil Lines, District Lahore shall proceed in accordance with law.

(Farooq Haider)
Judge

“Approved for reporting.”

(Farooq Haider)
Judge