

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

PRESENT: Mr. Justice Ijaz Ahmed Chaudhry  
Mr. Justice Iqbal Hameedur Rahman

**Criminal Petition No.247/2015**

(Against the order dated 9.04.2015 passed by the Lahore High Court, Lahore in CrI.Misc. No.3522-B/15)

Muhammad Sadiq and others

Petitioners

Versus

The State and another

Respondents

For the Petitioner:

Ch. Muhammad Maqsood Ahmad, ASC  
a/w petitioners in person

For the State:

Ch. M. Waheed Khan, Addl.P.G. Pb.  
Mr. M. Aslam, S.I. P.S. Kamoke

For the Complainant:

Justice (R) Khurshid Anwar Bhinder, ASC

Date of Hearing:

5.05.2015

**ORDER**

**Ijaz Ahmed Chaudhry, J.-** Through the instant petition the petitioners seek setting aside of the order dated 9.04.2015 through which CrI.Misc. No.3522-B/15, filed by the petitioners for grant of bail before arrest in case FIR No.440 dated 7.07.2014 registered under Section 365 PPC, has been dismissed.

2. Facts of this case are that according to the complainant-Abrar Hussain an incident has taken place on 7.07.2014 within the jurisdiction of Police Station, Kamonki, District Gujranawala and allegedly brother of the complainant namely Iftikhar Ahmad was abducted by the petitioners and other accused in a black car.

3. The petitioners moved an application for bail before arrest before the learned Addl. Sessions Judge on 8.07.2014 which was dismissed on merits on 24.09.2014. Feeling aggrieved the petitioners approached the learned High Court through CrI.Misc. No.14011-B/14 but vide order dated 11.11.2014, the same was withdrawn. Then another application was moved by the petitioners on 14.01.2015 before the learned Addl. Sessions Judge which was

dismissed on 31.01.2015. Thus, the petitioners moved their third application on 21.02.2015 before the learned Addl. Sessions Judge which was also dismissed on 10.03.2015. Against the said order the petitioners filed Crl.Misc. No.3522-B/15 before the learned High Court which was dismissed through the impugned order dated 9.04.2015.

4. Learned counsel for the petitioners contends that first bail application of the petitioners was dismissed on merits. However, after dismissal of the said application, fresh grounds were available to the petitioners as Section 365 PPC was deleted by the investigating officer. Learned counsel further contends that this Court being the Apex Court can see facts and circumstances of the case and grant bail to the petitioners at this stage as well; that there are contradictions in the statement of the complainant in the FIR and statement of the abductee under Section 164 Cr.P.C.; that a private complaint has also been filed after 7/8 months and the benefit of all these contradictions goes to the accused and it is a fit case for confirmation of bail before arrest. Learned counsel further contends that the second application of the petitioners was dismissed on 31.01.2015 against which Crl.Misc. No.1474-B/15 was moved in the High Court and the High Court while disposing of the same granted protective bail to the petitioners after which they had moved third application before the Addl. Sessions Judge.

5. Learned counsel for the complainant as well as learned Addl. Prosecutor General, Punjab have opposed the bail of the petitioners on the ground that the petitioners have been nominated in the FIR with specific role; that so far none of the petitioners have been arrested and the challan has been submitted; that the petitioners are on pre-arrest bail and no report under Section 173 Cr.P.C. was submitted on 31.01.2015.

6. We have heard learned counsel for the parties and have carefully perused the record.

7. Considerations for pre-arrest bail are totally different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is duty of accused to establish and prove *mala fide* on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offences with *mala fide* and ulterior motive. Admittedly the petitioners' first bail application was dismissed on merit. It is also an admitted fact that against the order of dismissal of the said application, the petitioners moved CrI.Misc. No.14011-B/14 before the learned High Court which was withdrawn vide order 11.11.2014. Thus, the remedy available to the petitioners was finalized up to the High Court and the only forum available to the petitioners was to approach this Court. Bail before arrest cannot be granted unless person seeking it satisfy conditions specified under Section 497(2) of the Cr.P.C. and establishes existence of reasonable grounds leading to believe that he is not guilty of offence alleged against him and there are in fact sufficient grounds warranting further inquiry. If one fails to prove any *mala fide* or ulterior motive in the first pre-arrest bail petition before the learned Additional Sessions Judge or before the learned High Court then the only remedy available to him is of challenging the said order before this Court or before the learned High Court in case the bail before arrest is declined by the learned Sessions Court. Filing of pre-arrest bail petitions again and again amounts to misuse of law and it also increases the backlog of the Courts and this growing trend should have to be stopped by the learned Courts below. When the second application was withdrawn by the learned counsel for the petitioners, the petitioners could not avail the said remedy even after the deletion of Section 365 PPC by the investigating officer as it had attained finality but the petitioners adopted the policy of hide and seek by moving a

number of applications. In this respect the learned Addl. Sessions Judge has passed a well reasoned order. It has been pointed out that at the time of dismissal of second application, learned counsel for the petitioners requested the Court to grant protective bail to the petitioners in order to enable them to approach the concerned Court and the High Court without taking into consideration that the bail application, moved by the petitioners, has already been dismissed granted protective bail to the petitioners. We are constrained to hold that the learned Judge-in-Chambers while granting protective bail to the petitioners has not applied the correct law as their application could not be entertained.

7. For what has been discussed above, without touching the merits of the case, the conduct of the petitioners is sufficient to dismiss this petition. Resultantly, this petition is dismissed and leave to appeal is refused.

Judge

Judge

ISLAMABAD

5<sup>th</sup> May, 2015

**APPROVED FOR REPORTING**

*(Nasir Khan)*