

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No. 1222-B of 2021

Abid Hussain and others

Versus

The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	13.01.2022	Mr. Jan Muhammad Khan, Advocate for the petitioners along with petitioners. Mr. Zubair Aslam, Advocate for the complainant. Mr. Muhammad Mujahid, Learned State Counsel. Zafar Ali, ASI.

Through the instant petition, the
petitioners seek bail before arrest in case
F.I.R No. 801/2021, dated 11.09.2021,
offence under Sections 506(ii), 337F(ii),
148, 149 P.P.C., registered at Police
Station Koral, Islamabad.

02. Earlier, bail before arrest of the
petitioners / accused was dismissed by
the Court of learned Additional Sessions
Judge-I, East-Islamabad vide Order dated
12.11.2021.

03. It is alleged that the petitioners along with co-accused have forcibly entered into house of the complainant while armed with deadly weapons, beaten family members of the complainant, resultantly caused injuries upon three (03) persons and also torn the cloths of *Bhabi* of the complainant and made her naked on the road, hence the instant F.I.R.

04. Learned counsel for the petitioners / accused, *inter alia*, contends that the petitioners / accused are innocent; there is no evidence available against them; FIR has been registered with malafide intentions and by ulterior motives just in order to settle the score of the family dispute and has prayed for the confirmation of bail before arrest.

05. Conversely, learned State Counsel assisted by learned counsel for the complainant has controverted the

arguments made by learned counsel for the petitioners and has stated that petitioners / accused are nominated in the FIR; they have committed a heinous crime, recovery of incriminating articles is liable to be effected, hence bail before arrest of the petitioners / accused is liable to be cancelled.

06. Arguments advanced by learned counsel for the petitioners / accused, learned State Counsel assisted by learned counsel for the complainant have been heard and record has been perused with their able assistance.

07. The petitioners / accused have specifically been nominated in the FIR; they have forcibly entered into house of the complainant while armed with dagger and pistols, inflicted injuries upon three (03) persons with the said deadly weapons.

08. Medico Legal Reports of the victims

are on record. Police has recorded statements of five (05) witnesses U/S 161 Cr.P.C, who have supported the prosecution story. Statement of a lady whose cloths were torn, made naked on road, is also on record.

09. Investigating Officer has stated that he needs custody of the petitioners / accused for effecting recovery of crime weapons as well as for collecting the evidence.

10. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon the cases reported as **PLD 1994 Supreme Court 65, PLD 1994 Supreme Court 88, 2021 SCMR 111**

and 2020 SCMR 937.

11. Bail before arrest cannot be claimed as a matter of legal right in each case and also it cannot be expected that it would be granted in each case unless legal requirements laid down are met. It is to be kept in view that bail granted before arrest, causes setback in investigation and can stand as stumbling block in the way of recovery of incriminating articles. Reliance is placed on a case titled as **Waleed Arfaqat Vs. The State and another (2021 MLD 1226).**

12. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Sarwar Sultan Vs. The State (PLD 1994 Supreme Court 133)**, that:

"Grant of pre-arrest bail means that accused is exempted from joining the investigation and by not joining the investigation, prosecution case may suffer for want of recovery of incriminating articles and other material, which may be necessary to connect the

accused with commission of alleged crime”.

13. It is well settled law that relief of pre-arrest bail is granted only in those matters where it would appear that the registration of such cases was passed on enmity / malafide or where no offence was shown to have been committed on the very face of record. This is not the position in the instant case. Reliance is placed upon the cases reported as ***PLD 1983 Supreme Court 82, 1996 SCMR 74 and 1996 SCMR 71.***

14. In a case titled as ***Rana Abdul Khaliq Vs. The State and others (2019 SCMR 1129).*** it was held as follows:

"Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that

intended arrest is calculated to humiliate him with taints of malafide; 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”.

15. In the recent order passed by Hon’ble Supreme Court of Pakistan in a case titled as **Kamran Attaullah and another Vs. The State, passed in Criminal Petition No. 149-K of 2020,** it was held as follows:

“It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure / process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information / evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means”.

16. There can be no escape from the fact that the petitioners / accused are nominated in the FIR with specific role that they have caused injuries upon three (03) persons, torn the cloths of innocent lady and made her naked on the road.

17. Recovery of crime weapons as well as other evidence is liable to be effected from the petitioners / accused. There is sufficient evidence available on record to connect the petitioners / accused with the commission of crime.

18. Considering the above facts and circumstances, I am clear in my mind that the petitioners / accused have failed to make out a case for grant of pre-arrest bail. Consequently, instant bail petition stands **dismissed**. Ad- interim bail already granted to the petitioners / accused vide order dated 19.11.2021, passed by this Court is hereby re-called.

19. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-