

**ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT**

Criminal Misc. No.198-B of 2022

Rukhsana Bibi

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.04.2022	Petitioner on ad-interim bail with Mr. Taimoor Aslam Khan, Advocate. Mr. Ghulam Farooq Awan, Advocate for respondent. Syed Shahbaz Shah, State counsel along with Muhammad Akram Gondal, Inspector.

Through the instant Criminal Misc., petitioner-accused (*Rukhsana Bibi*) prays for pre-arrest bail in FIR No. 1097, dated 12.12.2021, Under Section 302,109& 34 PPC, registered at Police Station Koral, Islamabad.

2- According to the allegations set-forth in the FIR, on 07.12.2021, one Sattar resident of the vicinity informed the complainant that some unknown persons injured his brother Shauakt Hussain by fire shots; that on receipt of information, complainant reached PIMS Hospital, where Shauakat Hussain was lying unconscious and subsequently on 12.12.2021 passed away.

3. Learned counsel for petitioner argued that it was an unseen occurrence; that the petitioner is a lady, aged about 51 years and her involvement is tainted with malafide; that the petitioner has falsely been roped in the instant case; that in the FIR no specific role was assigned to the petitioner; no incriminating material has to be recovered from the petitioner; that the petitioner has joined the investigation and is no more required for further probe or investigation; that the material made basis to hold the petitioner

guilty is discrepant and retains no evidentiary value; that neither petitioner was involved in any criminal activity nor any criminal case was registered against her, therefore, she being women folk and old lady is entitled for the concession of pre-arrest bail. That the only role ascribed to the petitioner is that of hatching of a conspiracy. The learned counsel placed reliance upon case law reported as **“PLD 2021 SC 708, 2014 PCr.LJ 237, 2011 PCr.LJ 72, 2007 PCr.LJ 752, 1999 SCMR 1316.”**

4. On the other hand, learned State Counsel assisted by leaned counsel for the complainant repelled the above submissions. It is asserted that the petitioner is nominated in the FIR and sufficient incriminating material is available on record which *prima facie* connects her with the commission of alleged offence, which falls within the ambit of prohibitory clause of section 497 Cr.P.C; that the petitioner had a commanding role which ultimately resulted in death of an innocent boy, therefore petition is liable to be dismissed.

5. Heard, record examined.

6. It is settled principle that pre-arrest bail is an extra ordinary remedy, to be extended by diverting usual course of law for the purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique. The protection is based upon equity and cannot be extended in every criminal case, *prima facie*, founded upon incriminatory evidence, warranting custody for investigation purposes. Reliance is placed upon case of **‘Maqbool Ahmad Mahessar and others v. National Accountability Bureau (NAB) through Chairman and others (2021 SCMR 1166).**

7. Furthermore, an 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

evidence consequent upon arrest. Reliance is placed upon 'Kamran Ataullah and another v. The State (2021 SCMR 449).

8. The Hon'ble apex Court in a recent pronouncement in the case of **Shahzada Qaiser Arfat alias Qaiser v. The State and another** (PLD 2021 Supreme Court 708) has graciously held that:-

*“the power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of **liberty, dignity, due process and fair trial**. Pre-arrest bail is in the nature of a check on the police power to arrest a person. **The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail**, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining **whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct**, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part.”*

(Emphasis added)

9. The Hon'ble Apex Court in the case of **Zakia Begum v. The State (1991 SCMR 297)** wherein the petitioner was nominated in the FIR and was ascribed the role of 'Lalkara' the petitioners bail application was rejected by the High Court against which the petitioner approach the Hon'ble Apex Court. The Hon'ble Apex Court while deliberating upon the role of the petitioner had confirmed the pre-arrest bail granted to the petitioner.

10. Reliance is also placed upon the judgment passed in case of **Aqsa Safdar & another v. The State and others (2019 SCMR 1923)**, wherein the bail before arrest of the petitioners was confirmed, while holding that there was no direct evidence present on the record against the petitioners for their involvement in the alleged offence. Malafide on part of the complainant could not be ruled out for false implication of the petitioners.

12. Reliance can also be placed upon **Mehmood Khan v. The State (2007 PCr.LJ 752)** wherein, the petitioner was nominated in the FIR and was saddled with the allegations of abetment, and no evidence that the petitioner abetted the actual accused to commit the murder was present on record, no time of abetment was provided in the FIR. Bail before arrest of the petitioner was confirmed in the circumstances.

11. The ratio set in the case of **Shahzada Qaiser Arfat supra** guides to hold that, if there is non-availability of incriminating material against an accused, his implication by the complainant or the persistence of the police to arrest him, would be construed as the circumstances, which by themselves indicate malafide on the part of the complainant or the police and in that eventuality, an accused need not to lead any evidence to substantiate the malice or malafide on part of the complainant or the police.

12. According to the ratio, the opinion of the Court while deciding pre-arrest bail petition of an accused with allegation of abetment or conspiracy, should be based on some solid material, collected during the course of the investigation and not on surmises or conjectures. It has also been graciously held that in

case of non-availability of direct evidence, the police must collect such circumstantial evidence during investigation from which a court could draw a legitimate inference of the existence of conspiracy and involvement of the accused in the conspiracy.

13. The existence of solid/incriminating material which could be made basis to draw a legitimate inference about involvement of an accused in the commission of the alleged offence would, therefore, be mandatory.

14. On the touchstone of the principle laid down in the case of **ShahzadaQaiserArfat alias Qaiser v. The State and another**” (PLD 2021 Supreme Court 708), the record of the instant case reveals that the petitioner is an accused of hatching conspiracy for committing murder of the deceased. The First Information Report as well as the statements recorded under Section 161 Cr.P.Care short of details of such conspiracy/ abetment as to its time and place besides names of the persons who heard about such conspiracy. It is not the case of the prosecution that the petitioner had even remote role in the commission of the alleged offence. The stance of the prosecution that she had been in contact with her husband and son at the relevant time cannot be termed to be an incriminating circumstance as it would not lend support that she was planning any conspiracy through the said conversations, until and unless the same is surfaced. It was also for the reason that the transcript of the conversation inter se co-accused Amir, son and husband of the petitioner did not reveal anything about the details of the conspiracy. The accusation, or for that matter doubt, how firm it may be, in the estimation of this Court cannot be termed, or even looked into as an incriminating material, on the basis of which any legitimate inference with regard to the involvement of the petitioner in the commission of the alleged offence, could be drawn.

15. The disclosure of the co-accused before the police during the course of investigation without mentioning details of the

occurrence and non-collection of any evidence pursuant to the said disclosure cannot be equated with legitimate incriminating material particularly, when the stated motive based on earlier criminal litigation was culminated into compromise between the parties, and the investigation verifies that it had no connection with the commission of the present occurrence.

16. Having examined the case, on tentative assessment of the material placed on record, it is concluded that petitioner has succeeded to make out a case for exercise of extra ordinary discretion of pre-arrest bail for reasons enumerated above. Consequently, instant criminal miscellaneous is allowed. Ad-interim pre-arrest bail already granted to the petitioner vide order dated 25.02.2022 is confirmed subject to her furnishing fresh bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

17. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during the trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Approved for reporting

AR Ansari