

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 90-K OF 2023

(On appeal against the order dated 28.04.2023 passed by the High Court of Sindh, Circuit Court Hyderabad in Criminal Bail Application No. S-362/2023)

Munawar Bibi

... Petitioner

Versus

The State

... Respondents

For the Petitioner:

Mr. Abdul Khursheed Khan, ASC a/w petitioner
in person
(Via video link from Karachi)

For the State:

Mr. Zafar Ahmed Khan, Addl. P.G. Sindh
(Via video link from Karachi)

Date of Hearing:

03.08.2023

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 28.04.2023 passed by the learned Single Judge of the learned High Court of Sindh, Circuit Court Hyderabad, with a prayer to grant pre-arrest bail in case registered vide Crime No. 62/2023 under Section 379 PPC at Police Station Kazi Ahmed, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that she along with her co-accused committed theft of two tires along with rims of the tractor trolley of the complainant.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the allegations leveled against the petitioners are false, frivolous, baseless, concocted and the prosecution story is not worthy of credit. Contends that there is a delay of more than three months in lodging the FIR for which no plausible explanation has been put forth

by the complainant. Contends that the co-accused of the petitioner namely Muhammad Ali, who was ascribed the similar role, has been granted bail by the court of competent jurisdiction, therefore, following the rule of consistency the petitioner also deserves the same treatment to be meted out.

4. On the other hand, learned Law Officer opposed the petition by contending that the petitioner has specifically been nominated in the crime report with a specific role and she admitted that she is ready and willing to return all the stolen articles, therefore, she does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. As per the contents of the crime report, the allegation against the petitioner is that she along with her co-accused committed theft of two tires along with rims of the tractor trolley of the complainant. Although, learned High Court noted in the impugned order that the petitioner produced certain documents in which she admitted before the *nekmards* (pious men) that she is ready to return all the theft articles. However, the learned counsel for the petitioner denied the same and stated that the petitioner is an illiterate lady and could not understand any document. FIR was lodged after an inordinate delay of more than three months for which the complainant did not utter a single word. We have been informed that the co-accused of the petitioner namely Muhammad Ali, who was ascribed the similar role, has been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited upto the arrest of the petitioner because of the reason that soon after her arrest she would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The

State through Prosecutor General of Punjab and another (2022 SCMR 1424). The petitioner is a lady of advanced age. The maximum punishment provided under the statute for the offence under Section 379 PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception. Reliance is placed on Tariq Bashir Vs. The State (PLD 1995 SC 34). This Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations. No useful purpose would be served by sending the petitioner behind the bars. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into her guilt.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order and confirm the *ad interim* pre-arrest bail granted to the petitioner by this Court vide order dated 18.07.2023.

JUDGE

JUDGE

Islamabad, the
3rd of August, 2023
Not Approved For Reporting
Khurram