

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CRIMINAL PETITION NOS. 41-K & 42-K OF 2023

(On appeal against the order dated 30.01.2023 passed by the High Court of Sindh, Sukkur in CrI. Bail Application Nos. S-678/2022 & S-32/2023)

Jamaluddin
Rabail

(In Cr.P. 41-K/2023)
(In Cr.P. 42-K/2023)
... Petitioners

Versus

The State

(In both cases)
... Respondent

For the Petitioners: Mr. Zuber Ahmed Rajput, ASC a/w Jamaluddin,
petitioner in person
(Via video link from Karachi)

For the State: Mr. Hussain Bukhsh Baloch, Addl. P.G. Sindh

Date of Hearing: 29.05.2023

ORDER

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Through the instant petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order dated 30.01.2023 passed by the learned Single Judge of the learned High Court of Sindh, Bench at Sukkur, with a prayer to grant pre-arrest bail (in Criminal Petition No. 41-K/2023) and post-arrest bail (in Criminal Petition No. 42-K/2023) in case registered vide FIR No. 317/2022 dated 21.11.2022 under Sections 324/148/149 PPC at Police Station Shaheed Murtaza Meerani, Khairpur, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioners is that they along with co-accused while armed with firearms launched a murderous assault on the complainant party. The petitioner Rabail made a straight fire on the complainant Kaleemullah, which hit on his left leg whereas the petitioner Jamaluddin caused firearm injury at the left ankle of Muhammad Pariyal, cousin of the complainant.

3. At the very outset, it has been argued by learned counsel for the petitioners that the petitioners have 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 an inordinate delay of three days in lodging the FIR for which no explanation has been given. Contends that injuries sustained by the complainant are on non-vital parts of the body, as such, the provision of Section 324 PPC is not attracted in the case. Contends that the learned High Court while declining bail to the petitioners has not followed the guidelines issued by this Court for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioners may be granted bail.

4. On the other hand, learned Law Officer opposed the petitions by contending that the petitioners have specifically been nominated in the crime report with a specific role of firing at the complainant and injured PW, therefore, they do 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 petitioners is that they along with co-accused while armed with firearms launched a murderous assault on the complainant party. The petitioner Rabail made a straight fire on the complainant Kaleemullah, which hit on his left leg whereas the petitioner Jamaluddin caused firearm injury at the left ankle of Muhammad Pariyal, the cousin of the complainant. There is no denial to this fact that the FIR was lodged after an inordinate delay of about three days. The only explanation put forth by the complainant is that firstly they got the Police letter for treatment from Civil Hospital and after the treatment they lodged the FIR. However, this explanation does not seem to be impressive, especially when the Police was allegedly approached by the complainant on the very first day. The complainant and the injured PW received injuries on the non-vital

parts of the body and the petitioners did not repeat the fire despite having ample opportunity to do so. In this view of the matter, the question whether Section 324 PPC would be applicable in the case or not would be determined by the learned Trial Court after recording of evidence. As far as the question which requires the attention of this Court is that petitioner Jamaluddin has been granted ad interim pre-arrest bail by this Court whereas the other petitioner Rabail has filed petition claiming post-arrest bail. As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he 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 Courts of this country are not meant to send the people behind the bars rather the purpose of the entire judicial system is to protect the liberty of the citizen against whom baseless accusation has been leveled keeping itself within the four corners of the law. The rationale behind this principle would be defeated if on a technical ground a person is sent behind the bars. In Sharaf Faridi Vs. Federation of Pakistan (PLD 1989 Karachi 404) it was held that "*Judiciary has been termed as a watch dog and sentinel of the rights of the people and the custodian of the Constitution. It has been described as "the safety valve" or "the balance wheel" of the Constitution.*" It was further held that Judiciary as the custodian of the fundamental rights has been charged with a duty as a watch dog to see that none of the fundamental rights of the

people are abridged or taken away. This court in a number of cases has held that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioners squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into their guilt.

7. For what has been discussed above, we convert these petitions into appeals, allow it and set aside the impugned order. The *ad interim* pre-arrest bail granted to the petitioner Jamaluddin in Criminal Petition No. 41-K/2023 by this Court vide order dated 17.04.2023 is hereby confirmed. Whereas petitioner Rabail is admitted to bail subject to his furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
29th of May, 2023
Approved For Reporting
Khurram