

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar

Criminal Petition No.705 of 2023

Against the order dated 24.05.2023 passed by the
High Court of Sindh, Hyderabad Bench, in
Cr.B.A.No.S-421/2023

Mir Muhammad s/o Mir Hassan ...Petitioner

Versus

The State through Prosecutor General Sindh ...Respondent

For the Petitioner: Mr. Aftab Alam Yasir, ASC
Petitioner in-person
(via video link from Karachi)

For the State: Mr. Zafar Ahmed Khan, Addl. PG Sindh
Mr. Ali M. Bajeer, SI
Mr. Yar Muhammad, ASI.
Mr. M. Hussain, ASI

For the Complainant: Complainant in-person
(via video link from Karachi)

Date of Hearing: 22.11.2023

ORDER

Muhammad Ali Mazhar, J. Through this criminal petition for leave to appeal, the petitioner seeks pre-arrest bail and impugns the order dated 24.05.2023 passed by High Court of Sindh, Hyderabad Bench, in Cr.B.A.No.S-421/2023, whereby his bail was declined.

2. Succinctly stated, the facts of the case encapsulate that the petitioner was nominated in FIR No. 48/2023 dated 07.04.2023, lodged under Sections 324, 147, 148, 149, and 504 of the Pakistan Penal Code, 1860 ("PPC") at Police Station, Chambar, District Tando Allah Yar. According to the narrative of the complainant, the petitioner inflicted a firearm injury at the back region of the complainant's

brother Imran while shooting at the complainant party with murderous intent. It was further alleged that the petitioner, along with his accomplices, were armed with *lathis*, hatchets, and pistols/guns, also caused blows to the complainant party.

3. The learned counsel for the petitioner argued that the petitioner has been falsely implicated in the case. The case is based on *mala fide* intention because the petitioner was one of the contesting candidates in the previous elections, and he has been made a scapegoat by involving him in the instant case. It was further contended that, according to the FIR, a firearm injury has been ascribed, but in the medico-legal report it is stated to have been caused by a sharp edged weapon. He further referred to the report of the Special Medical Board, brought on the record *vide* CrI.M.A. No.1118/2023, in which, according to the unanimous opinion of the Special Medical Board, the injuries mentioned in the medico-legal report were found to be fabricated.

4. The complainant, present via video link from Karachi, and the learned Additional Prosecutor General Sindh ("Addl. PG"), supported the impugned order and contended that the petitioner has been nominated in the FIR with the specific role of inflicting firearm injury upon the PW Imran. Further, the statements of the PWs under Section 161 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") fully supported the version of the complainant.

5. Heard the arguments. To start with, we confronted the learned Addl. PG and the complainant with regard to the final medico-legal report, but they could not account for the inconsistencies between the injuries mentioned in the FIR and the initial medico-legal report. There is no cavil that in the FIR, the petitioner has been assigned the specific role of causing a firearm injury to the injured, however in the final medico-legal report, dated 20.4.2023, the alleged injuries are said to have been caused by a "sharp cutting" object, and subsequently the injured Imran was examined by the Special Medical Board, which, *vide* the medico-legal report dated 03.08.2023, found the injuries to be fabricated. Even the Investigation Officer ("IO"), Ali Muhammad Bajir, informed us that he did not find the petitioner guilty and also submitted a report under Section 168 Cr.P.C to the Station House

Officer ("SHO"), but the SHO ignored the report without any rhyme or reason and a report under Section 173 Cr.P.C. was submitted in the Trial Court. It is a well settled exposition of law that investigating crimes is the responsibility of the police, and the IO performs a vital and dominant role in this regard. It is not the duty of the Court to monitor the investigation unless the investigation conducted by IO appears to be *mala fide*, an abuse of power, or in violation of the relevant provisions of the Cr.P.C., therefore, the jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited.

6. While considering the petition for bail, the Court has to ascertain the gravity and seriousness of the accusation. The precise role of the accused must be determined and the Court must also gauge the existing material in order to reach a tentative assessment on whether the accused has been indicted with the object of injuring, demeaning or disgracing his image and reputation. No doubt, anticipatory bail can be granted in the exceptional circumstances. The jurisdiction to consider the grounds of bail in pre-arrest and post-arrest are different. The remedy of pre-arrest bail is meant to safeguard and shelter an innocent person who has been dragged into a case with *mala fide* intention or ulterior motives by the complainant or prosecution. While entreating the exercise of discretion of the Court for the grant of anticipatory bail, the accused is obligated to demonstrate that the case against him is based on *mala fide* and must divulge reasonable grounds to substantiate that he is not guilty of the offence and that sufficient grounds are available to lead further inquiry. The concepts of *mala fide*, ulterior motives or false implication are elementary and indispensable constituents for enlarging the accused on pre-arrest bail with the imminent apprehension of his arrest if the bail is declined. The mere gravity of the allegation does not impede the grant of pre-arrest bail if reasonable grounds are otherwise available on a tentative appraisal of the evidence. Based on the divergence and obvious contradiction in the initial medico-legal report *vis-à-vis* the seat of injury mentioned in the FIR, as well as the opinion subsequently rendered by the Special Medical Board comprising six doctors, and the statement of the IO made before us in the Court (which was not controverted by the complainant or the learned Addl. PG), it appears

that the case of the petitioner requires further inquiry and there are reasonable grounds to confirm his pre-arrest bail. So far as the culpability of the petitioner in the commission of offence, if any, is concerned, that would be better adjudged by the Trial Court after production of pro and contra evidence. However, at this stage, on the basis of a tentative assessment of the material placed before this Court, the possibility of *mala fide* intention or ulterior motive on the part of the complainant to implicate the petitioner in the case cannot be ruled out and requires further inquiry.

7. In view of what has been discussed above, we are inclined to confirm the *ad-interim* pre-arrest bail already granted to the petitioner by this Court *vide* order dated 17.07.2023. The petition is converted into an appeal and allowed. The *ad-interim* pre-arrest bail already granted by this Court *vide* order dated 17.07.2023 is hereby confirmed on the same terms. Needless to say, the observations laid down in this Order are tentative in nature and shall not prejudice the case of either party. In case the petitioner misuses the concession of bail, the complainant or the prosecution may move an application for cancellation of bail in the Trial Court. Above are the reasons for our short order of even date.

Judge

Judge

ISLAMABAD
22nd November, 2023
Mudassar/*
Approved for reporting