

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.MBBA.No.300-D/2022

Manzoor Ahmad

Versus

The State and another

JUDGMENT

For petitioner: Mr. Shuakat Hayat Khan
Khakwani Advocate alongwith
petitioner in person.

For State: Mr. Rahmatullah, Asstt: A.G.

For complainant: Muhammad Abid Advocate.

Date of hearing: 23.8.2022.

MUHAMMAD FAHEEM WALLI, J.- Through
the instant petition, the petitioner Manzoor Ahmad
seeks pre-arrest bail in case FIR No.92 dated
21.02.2022 under Section 489-F PPC of Police
Station Paharpur, D.I.Khan.

2. Arguments heard and record perused.

3. The record reflects that earlier the
petitioner had submitted an application for bail
before arrest (BBA) in the Court of learned
Additional Sessions Judge, Paharpur (D.I.Khan).
He was granted ad-interim pre-arrest bail vide
order dated 22.02.2022 but on 26.5.2022, his BBA

petition was rejected/dismissed because of his absence. Subsequently he filed bail before arrest petition bearing Cr.MBBA.No.226-D/2022 before this Court which was disposed of vide order dated 03.6.2022 in terms that the petitioner may approach the learned Additional Sessions Judge, Paharpur (D.I.Khan) to give explanation of his absence on the date fixed before the Court in the earlier BBA in view of latest pronouncements of Hon'ble Supreme Court of Pakistan in the case of *"Shazaib and others Vs. The State"* (PLD 2021 S.C. 886) and *"Inamullah Vs. The State"* (PLD 2021 S.C. 892). Thereafter the petitioner submitted another BBA petition before the Court of learned Additional Sessions Judge, Paharpur (D.I.Khan) which too was dismissed on 30.6.2022 because of his absence as well as on merit. Then the petitioner again approached this Court for bail before arrest and submitted Cr.MBBA.No.275-D/2022. On 05.7.2022, after arguing the case at some length, the learned counsel representing the petitioner requested for withdrawal of BBA petition in the light of ibid referred judgments of august Apex Court and the same was disposed of accordingly.

4. It appears from the record that instead of approaching the Court of learned Additional

Sessions Judge, Paharpur (D.I.Khan) in line with his request and order dated 05.7.2022 of this Court in Cr.MBBA.No.275-D/2022, the petitioner, by taking benefit of summer vacations, filed bail before arrest petition bearing Cr.MBBA.No.2179-P/2022 at Principal Seat of this Court and obtained ad-interim pre-arrest bail vide order dated 20.7.2022 without disclosing the factum of previous BBA petition and the said petition was sent to this Court for disposal.

5. Whether after withdrawal of first BBA petition the petitioner can file a second petition for the same relief? The accused can approach the same Court with a fresh pre-arrest bail petition if the earlier one has been withdrawn without advancing arguments on merits. However, the Court must be watchful that the successive petition is not readily entertained or the concession of ad interim bail granted to the accused, unless he furnishes satisfactory explanation for withdrawal of the first petition and filing of the second one; otherwise, an unscrupulous accused can abuse the process of Court for ulterior purposes. My reliance is upon the case of august Supreme Court of Pakistan titled "*Inamullah Vs. The State*"



reported in (PLD 2021 SC. 892), in which it was held that:--

“While the accused can approach the same court with a fresh pre-arrest bail petition if the earlier one has been withdrawn without advancing arguments on merits, the court must be watchful that the successive petition is not readily entertained or the concession of ad interim bail granted to the accused, unless he furnishes satisfactory explanation for withdrawal of the first petition and filing of the second one; otherwise, an unscrupulous accused can abuse the process of court for ulterior purposes. Therefore, the accused must be required by the court to furnish satisfactory explanation for withdrawing the first pre-arrest bail petition at the time of entertaining the second pre-arrest bail petition. Unless there is satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the Police to prolong the investigation. Therefore, while the accused has access to courts to seek pre-arrest bail, even successively for justifiable reasons, he cannot be permitted to abuse the concession of ad interim bail to stall the investigation and play hide and seek with the criminal justice system. In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.”



Similarly in the case of “*Muhammad*

Sadiq and others Vs. The State and another”

(2015 S C M R 1394)”, following observations

were made:-

“If one fails to prove any mala fide or ulterior motive in the first pre-arrest bail petition before the learned Additional Sessions, Judge or before the learned High Court then the only remedy available to him is of challenging the said order before this Court or before the learned High Court in case the bail before arrest is declined by the learned Sessions Court. Filing of pre-arrest bail petitions again and again amounts to misuse of law and it also increases the backlog of the Courts and this growing trend should have to be stopped by the learned Courts below. When the second application was withdrawn by the learned counsel for the petitioners, the petitioners could not avail the said remedy even after the deletion of section 365, P.P.C. by the investigating officer as it had attained finality but the petitioners adopted the policy of hide and seek by moving a number of applications.”



The principle so enunciated has been further glorified in the case of *“Inamullah Vs. The State”* (PLD 2021 S.C. 892), wherein it was held by august Apex Court that:-

“Unless there is satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the Police to prolong the investigation. Therefore, while the accused has access to Courts to seek pre-arrest bail, even successively for justifiable reasons, he cannot be permitted to abuse the concession of ad interim bail to stall the investigation and

play hide and seek with the criminal justice system. In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable."

6. In this view of the matter, the petitioner after withdrawal of his first BBA petition from this Court could not have filed the second BBA petition without any solid explanation, inasmuch as he has not even disclosed in the instant petition the withdrawal of earlier BBA petition filed by him before this Court and in this view of the matter this Court granted ad-interim pre-arrest bail to him on 20.7.2022, as the record was not before the Court, therefore, the same is not entertainable.



7. Section 498-A, Cr.P.C. creates a statutory fetter or a statutory precondition requiring the presence of the petitioner in person in Court for the exercise of jurisdiction by the Court for granting pre-arrest bail. In case the petitioner/accused is not personally present before the Court, the Court is not authorized to grant him even an interim bail and the petition is to be dismissed for his lack of presence in Court. Once the petitioner is granted interim bail but he

does not appear on the date fixed, the Court has ample powers to dismiss the petition for non-prosecution. However, in case some explanation is furnished for his nonappearance, the Court may, if it finds the explanation to be satisfactory, exempt his presence for that day and adjourn the hearing of the petition for a short period. In the absence of the personal appearance of the petitioner, the Court cannot travel further into the case and examine the merits of the case. In fact the examination of the merits of the case in the absence of the accused totally defeats the intent and purpose of the statutory provision of Section 498, Cr.P.C. This is because once the Court proceeds to examine the merits of the case, then the Court has the option to either dismiss or allow the bail petition, while under Section 498-A, Cr.P.C. the Court is not authorized to admit the accused to bail in his absence.




8. It would also be relevant that before insertion of Section 498-A in the Cr.P.C., once a petition for pre-arrest bail was admitted for hearing and notice given to the State, it had to be decided on merits despite absence of the petitioner on the date fixed for hearing the petition. However, after the insertion of Section

498-A in the Cr.P.C., there were divergent views on this point: one set of judgments still retain the said view, while the other set of cases hold the view that the petition for pre-arrest bail is to be dismissed if the petitioner is not present in Court on the date fixed for hearing of the petition and it is not to be decided on merits in his absence, unless the Court exempts his presence. However, the apex Court disapproved the earlier view for the reason that true import and meaning of Section 498-A, Cr.P.C. was not taken therein. It is by now well settled that once the BBA petition is dismissed for non-appearance of the accused, the petitioner can file a fresh bail petition before the same Court provided he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation, however, if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail.

9. In holding this view I am fortified by the dicta laid by august Supreme Court of Pakistan

in Shazaib's case (supra), wherein it has been held that:-

"It is also clarified that in case the petition is dismissed for non-appearance of the accused in a pre-arrest bail matter under section 498-A, Cr.P.C., the petitioner can file a fresh bail petition before the same Court provided that he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail."



It has been further observed in Shazaib's case (supra) that the Court cannot dismiss the pre-arrest bail petition on merits, in addition to dismissing the same for non-prosecution due to the personal absence of the petitioner under section 498-A, Cr.P.C.; and such observations regarding the merits of the case would not be sustainable in the eye of law. Further reliance in this regard has been placed on "*Mukhtar Ahmad Vs. State*" (2016 SCMR 2064).

10. In the present case, similar directions were issued by this Court vide order dated 03.6.2022 to learned Additional Sessions Judge, Paharpur (D.I.Khan) to entertain fresh BBA

petition of the petitioner and if reasonable explanation of his absence on the date fixed before the Court in earlier petition is provided, then the case will be decided on merit. Though in compliance of the order, a fresh petition was entertained and ad-interim pre-arrest bail was granted to the petitioner but he again remained absent on 30.6.2022 and submitted an application through counsel for his exemption from personal appearance on the ground mentioned therein. But on the said date, his application for exemption from personal appearance was rejected and at the same time his BBA petition was also dismissed on merits for which the petitioner again approached this Court by filing Cr.MBBA.No.275-D/2022 which was withdrawn on 05.7.2022 in light of case law, referred to above.



11. At this juncture, next course of action available to the petitioner was to approach the learned Additional Sessions Judge, Paharpur (D.I.Khan) by filing a fresh BBA petition by explaining the reason for his absence but he filed the instant petition and obtained ad-interim pre-arrest bail at Principal Seat of this Court and the case file was sent to this Court for final decision wherein all these anomalies were observed by

scanning the entire record of the periodical petitions for BBA filed by the petitioner.

12. The upshot of the above discussion is that after withdrawal of first BBA petition, unilaterally, from this Court vide order dated 05.7.2022, by the petitioner, the instant petition is not entertainable, therefore, the same stands dismissed and the order dated 20.7.2022 regarding grant of ad-interim pre-arrest bail to the petitioner is recalled. However, in the light of above observations and dicta of the august Apex Court so referred, the learned Additional Sessions Judge, Paharpur (D.I.Khan) could not have decided the BBA petition on merits, therefore, the petitioner is at liberty to file a fresh BBA petition before the Court of learned Additional Sessions Judge, Paharpur (D.I.Khan) by giving explanation of his absence before the Court on the date fixed in earlier BBA petition and after satisfying the Court with the reasons for his non-appearance, the case be decided on merits.

Announced.
Dt: 23.8.2022.
Imran/*


JUDGE

(S.B)
Hon'ble Mr. Justice Muhammad Faheem Wali

office
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