

JUDGMENT SHEET
PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.574-A/2018

JUDGMENT

Date of hearing.....29-10-2018.....

*Petitioner (s)... (Noor Rehman etc) by Mr. Zia-ur-Rehman Khan,
Advocate.....*

*Respondent (s).... (The State etc) by M/S Yasir Zahoor Abbasi,
Assistant AG.....*

SYED MUHAMMAD ATTIQUE SHAH, J.-


Accused-petitioners, Noor Rehman, Afsar Muhammad Khan and Syed Nazakat Hussain Shah were granted ad-interim pre-arrest bail by this Court in case FIR No.92 dated 16.03.2018 under sections 380/34 of Pakistan Penal Code, 1860 registered at Police Station Battagram, vide order dated 19.07.2018.

2. The allegations against the accused/petitioners in this case are that they had committed theft in the office of complainant and took away Notary Register lying therein, on 13.03.2018 at unknown time.

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3. Learned counsel for the petitioners vehemently argued that petitioner No.1 Noor ur Rehman is a poor person and '*Chowkidar*' in a Primary school, whereas, complainant is an advocate of High Court and earlier on his behest a false case under section 489-F PPC was registered against the petitioner, wherein, his bail before arrest was confirmed by the learned lower Court. Subsequently the present case was registered by the complainant against the petitioner with malafide intention and ulterior motive to deprive the petitioner from his salary as the petitioner No.1 and complainant were having a joint account and entire amount is being drawn by the complainant and when the petitioner demanded the same he falsely charged him in the present case; the complainant is creating hurdles by misusing his professional status for the petitioner in getting justice, which is very much obvious from the Court proceedings available on record of the case.

On the other hand, learned counsel for the respondent controverted the assertions of the learned counsel for the petitioners and also challenged the very maintainability of present bail before arrest before this Court.



3. Arguments of the learned counsel for the accused/petitioners and learned Assistant AG assisted by learned counsel for the complainant heard and record perused with their able assistance.

4. Before dilating upon the merits of the case, this Court would like to address the question of jurisdiction in the matter of bail before arrest and in this regard would like to refer to the judgment of august Apex Court in Muhammad Arshad's case (PLD 2009 Supreme Court 427), wherein, it has been observed that:

"It was perhaps for the first time in December, 1948 that by interpreting the latter part of section 498 of the Code of Criminal Procedure in Hidayat Ullah Khan's Case (PLD 1949 Lah. 21- AIR 1949 Lah. 77), the power vesting in the high Courts and the Courts of Session to admit persons to bail before they could be arrested, was authoritatively discovered by a Full Bench of the Lahore High Court. Cornelius J. (As he then was) epitomized the said power and its bounds in the following words:-


"For the reasons given above, the reply which I would give to the question referred to us is that, in a proper case, the High Court has power under section 498, Criminal Procedure Code, to make an order that a person who is suspected of an offence for which he may be arrested by a Police Officer or a Court, shall be admitted to bail. The exercise of this power should, however, be confined to cases in which not only is good prima facie ground made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the

petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm."

Thus, in view of the above, this Court has the powers to entertain and admit persons to bail before arrest, within the contemplation of section 498 Cr.P.C, especially where reasonable grounds exist, as highlighted in the above referred case, such as, good prima facie case, mala fide, ulterior motives, apprehension of arrest and mal treatment by the investigating agency or any other cause which will eventually cause humiliation, irreparable loss and harm to an accused person.

5. Perusal of record would reveal that the complainant in his first application submitted to the SHO has charged Afsar Muhammad Khan (accused/petitioner), one Khali Rokhan, his brother and Nazakat Hussain Shah, Incharge Record Room D.C. Office Battagram (accused/petitioner) for committing theft of Notary Register from the office of complainant, who is an advocate by profession. The said application was entered at 'Madd' No.13 dated

15.03.2018. Thereafter, he submitted another application, which was entered at '*Madd*' No.15 dated 15.03.2018 in which he charged accused/petitioners Noor-ur-Rehman, Afsar Muhammad Khan and Syed Nazakat Hussain Shah for the commission of the offence by exonerating his brother Khali Rokhan. Later, the complainant submitted another application, which was entered at '*Madd*' No.19 dated 15.03.2018, wherein, he sought action against Incharge Record Room, D.C. Office, Battagram, Syed Nazakat Hussain Shah, accused/petitioner. The local police during inquiry under section 156(3) Cr.P.C placed copy of an application dated 13.03.2018 submitted by the accused/petitioner, Noor ur Rehman, to the learned Additional Sessions Judge, Battagram in case titled '*Noor ur Rehman vs. The State*', seeking summoning of Notary Register through Incharge Record Room, Deputy Commissioners Office, Battagram for evidence in the titled case, which was fixed for 14.03.2018. The said register was brought by the accused/petitioner Syed Nazakat Hussain Shah before the Court being Incharge Record Room General for evidence in the case. There is no direct evidence against the accused/petitioners regarding the alleged theft from the office of the complainant situated in



Battagram. It is worth to mention that earlier a case under Section 489-F PPC was registered against the accused/petitioner, namely, Noor Rehman, wherein, the present complainant was counsel for the complainant in the said case. Perusal of the said order would reveal that accused/petitioner Noor-ur-Rehman is Chowkidar in Government Primary School and also tenant of Abdullah Khan, complainant in the present case. In the said case of 489-F, father of complainant in that case appeared before the Court and belied the version of the complainant in that case. He also mentioned in his affidavit that actual dispute was regarding tenancy and salary of accused/petitioner. The most interesting aspect of the said case was that the cheque allegedly issued by Noor-ur-Rehman, accused/petitioner, pertains to his salary account, which is a joint account of accused/petitioner and the present complainant. The learned Additional Sessions Judge, Battagram observed in order dated 14.03.2018 that the accused/petitioner was falsely implicated in the case with malafide intention on the part of the complainant and Abdullah Khan, Advocate.

6. Thus, this Court, in view of this backdrop, concludes that malafide on the part of the complainant is palpable on face of record of the case

and it appears that accused/petitioner Noor-ur-Rehman has been implicated in the instant case with malafide intention and ulterior motive. Moreover, accused/petitioners Afsar Muhammad Khan and Syed Nazakat Hussain Shah have nothing to do with the instant case and they have also been falsely charged in the case.

7. Consequently, this application for grant of pre-arrest bail is allowed and ad-interim pre-arrest bail already granted to the accused-petitioners, vide order dated 19.07.2018 stands confirmed.

Dt.29-10-2018.


J U D G E

M.Saleem/*