

*I have the privilege to read the bail refusing order authored by my learned brother Mr. Justice Manzoor Ahmad Malik concurred by Mr. Justice Amin-ud-Din Khan. With utmost respect, I disagree with the reasonings hence, render my own findings.*

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.:-** *Petitioners have assailed jurisdiction of this Court under Article 185(3) of Islamic Republic of Pakistan, 1973 seeking leave to appeal against the order of Single Bench of Lahore High Court (Multan Bench) dated 30.10.2019 by which ad-interim bail granted vide order dated 14.10.2019 was recalled with a prayer to grant anticipatory bail to the petitioners in the interest of safe administration of criminal justice.*

2. *As per contents of the crime report bearing FIR No.191/2019 dated 27.05.2019, offences u/s 324, 452, 354, 148, 149 PPC registered with police station Sahuka, Burewala, it is alleged that 18 accused duly mentioned while 12 unknown variously armed came to the house of complainant. They hurled threats of dire-consequences and thereafter resorted to indiscriminate firing. It is further alleged that they trespassed into the house of complainant. Mehmood Khan accused raised "lalkara" upon which Athar Farooq fired with pistol .30 bore hitting Muhammad Mumtaz on right arm whereas fire shot made by Mehmood Khan had hit on right leg of a buffalo. Women folk belonging to complainant, Manzooran Bibi, Rashidan Bibi, Sonia Bibi and Khalida Bibi attracted to spot to rescue, they were given beating as a consequence they suffered injuries, clothes worn by them were also alleged to have been torn which made them naked. Thereafter all*

*the accused again indulged in aerial firing which had hit boundary walls and houses of the complainant party. The motive behind the occurrence is dispute over agricultural land.*

3. *The crux of the arguments advanced by learned counsel for the petitioners is that there is delay of 12 hours in lodging FIR for which no plausible explanation has been rendered. Contends that the story advanced by the prosecution is not convincing as it does not appeal to reason, rather it has been aggravated by the prosecution. Allegation that 30 persons in furtherance of their common intention had attacked, however, only one person sustained single fire shot on non-vital part seems to be absurd, said injury was ultimately declared under section 337F(iii) PPC, which entail maximum punishment for 3 years as per statute, whereas the rest of the PWs sustained simple injuries which are bailable in nature. It is argued that the allegation of entering into the house of complainant was found false during the course of investigation and as such Sec. 452 PPC was deleted, which has not been challenged. It is further apprised that the accused party called in question the medico-legal report of firearm injury being a fabricated document. A petition in this regard was filed which was allowed. Consequently medical board was constituted in pursuance of the order of Judicial Magistrate dated 14.06.2019. The Medical Board summoned injured PW but he escaped appearance on 08.07.2019, 27.07.2019 and 01.08.2019. In this scenario possibility of fabrication as alleged by the accused party cannot be ruled out. The question of vicarious liability in the given circumstances has lost its sting too; hence, same*

would be resolved after recording of evidence before the learned trial court.

4. On the other hand, learned Additional Advocate General resisted the grant of pre-arrest bail on the ground that 20 empties were recovered and as such recovery of weapon has to be affected. It is a case of common object; therefore, each of them is vicariously liable for the act of others and the petitioners cannot be granted extra-ordinary relief, hence, prayed for its rejection.

5. This Court is conscious of the fact that concept of pre-arrest bail is an extra-ordinary relief, which is limited to rare cases based upon trumped-up charges rather it has to be extended sparingly. To avail such relief, it is obligatory to establish that the prosecution has been launched, which is based upon malafides, ulterior motives and if it is materialized, it would certainly cause irreparable loss to his reputation. The practice to grant ad-interim bail is extension of such a remedy to act as a shield to protect innocent person facing highhandedness of individuals or authority against frivolous litigation. Literally speaking the term ad-interim is a misnomer as it has fallen in practice. It is worth mentioning that ad-interim is not mentioned in any provision rather this idea has been derived from the Order XXXIX Rules 1&2 of Code of Civil Procedure, 1908 ("**Code of 1908**"). The rationale to grant ad-interim bail is though synonymous to passing a prohibitory injunction, however, the concept of ad-interim bail is more precious as compare to prohibitory injunction. In the former, liberty of the person is involved whereas in the latter, only propriety rights are in question. The status of the accused becomes "custodia legis" during the period

*when ad-interim bail is granted till its final adjudication subject to furnishing of sureties to the satisfaction of the Court. Reliance is placed upon judgment of Full Bench reported as Shabbir Ahmad v. The State (PLD 1981 Lahore 599).*

*The provision of Sec.497(2) Cr.P.C confers powers upon the Court to grant bail during investigation, enquiry or trial subject to an opinion is formed by the Court that material placed before it is not sufficient to establish guilt and it still requires further inquiry into his guilt whereas Section 498 Cr.P.C deals with two situations:-*

- i) The fixation of the amount or bond according to the circumstances;*
- ii) Conferment of powers to grant bail to a person who is not in custody;*

*Although the provision of Section 498 Cr.P.C is neither ancillary nor subsidiary to Section 497 Cr.P.C but is an independent Section, however, bare reading of language of sub-section (2) of Section 497 Cr.P.C provide considerations for grant of bail by virtue of section 497(2) Cr.P.C it practically merged section 497/498 Cr.P.C. into one aspect qua concept of pre-arrest bail persuading it to act conjointly in all fairness. The practice for grant of extra-ordinary relief has passes through transitory period with divergent interpretation qua its scope since its inception, however, law is not static rather it is growing day by day. This Court while handing down a salutary judgment titled as "Meeran Bux vs. The State and another" (PLD 1989 Supreme Court 347) enunciated the concept of pre-arrest bail which was more innovative, liberal, crafted in consonance with the intent of legislature, hence, it has conceptually widened its scope in its entirety, elaborating its concept in the spirit*

of section 497/498 Cr.P.C. It was reiterated in another judgment of this Court titled as “Syed Muhammad Firdaus and others v. The State (2005 SCMR 784). This Court virtually introduced a broadened mechanism of interpretation to adjudge the element of malafide or malice at the touch stone of merits of the case. In the said case, mentioned above, the accused who was ascribed the injury to the deceased on leg (simple in nature) was granted pre-arrest bail by Sessions Judge which was recalled by learned High Court while exercising suo-motu revisional jurisdiction, however, the order of learned Sessions Judge was restored by this Court while elaborating the principle in the above said terms.

6. Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail, Court can consider the merits of the case in addition to element of malafides/ulterior motives which has to be adjudged in the light of law laid down by this Court in the case law stated supra. As a consequence, courts of law are under bounded duty to entertain broader interpretation of “law of bail” while interpreting material placed before it in more liberal manner to arrive at a conclusion which is badly required due to apparent downfall in the standard of investigation.

Otherwise liberty of a person is a precious right which has been guaranteed under the constitution of Islamic Republic of Pakistan, 1973. To abridge or curtail the liberty merely on the ground of being involved in a criminal case without adjudging it on merits would certainly encroached upon the right against free life. This right should not be infringed, rather it has to be protected by

*the act of Court otherwise it may frustrate the concept of safe administration of criminal justice.*

*7. The accumulative effect of the whole discussion and while seeking guidance from the above referred case law, this Court is of considered opinion that the petitioners have made out a case for grant of extraordinary relief of pre-arrest bail, hence are squarely entitled for the same. As a consequence this petition is converted into appeal and allowed accordingly.*

*Judge*

Lahore  
07.07.2020  
Approved for reporting.  
Athar