

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE MUHAMMAD ALI MAZHAR

CRIMINAL PETITION NO.13-K OF 2023

(Against the order dated 04.01.2023 passed by the High Court of Sindh at Karachi in Criminal Bail Application No.1548/2022)

Ahtisham Ali s/o Mehboob Ali ... Petitioner

Versus

The State ...Respondent

For the Petitioner: Mr. Abdul Khursheed Khan, ASC
Mr. Mazhar Ali B. Chohan, AOR

For the Respondents: Mr. Hussain Bux Baloch, Addl. P.G.

Date of Hearing: 22.03.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J.- This Criminal Petition for leave to appeal is brought to entreat pre-arrest bail in FIR No.307/2022, registered under Sections 324, 380, 427, 337-A(i), 337-F(i) and 34 of the Pakistan Penal Code, 1860 ("**PPC**") at Police Station Landhi, Korangi, Karachi. The petitioner had previously applied for pre-arrest bail before the High Court of Sindh, but *vide* order dated 04.01.2023 his request for pre-arrest bail was declined.

2. According to the gist of the aforesaid FIR lodged by Mehboob Ali (Complainant), his sons Ahtisham, Arsalan and his four daughters pressurized the complainant to sell the property and distribute the shares. It was further alleged in the FIR that last year the complainant's sons and daughters had beaten up the complainant and his wife and had also ousted them from the abode and despite the Court's order, did not allow them to enter into the house. Later

on, with the help of the Deputy Commissioner, the complainant entered into the aforesaid house. The complainant has also alleged the theft of precious articles, cash, the original file of the house etc. According to him, on 27.03.2022 at 04:30 pm, while he was chatting with his relatives as mentioned in the FIR, suddenly two persons Shahzad and Shamshad who are illegally residing in the first floor of the house used abusive language and also beat up the complainant's daughter in law and brother with heavy stick (danda) blow and also caused injuries to the complainant's nephew, Arish, who was taken to Jinnah Hospital for treatment. Thereafter, the complainant lodged the FIR under Sections 324, 380, 427, 337-A(i), 337-F(i) and 34, PPC against his son i.e. the petitioner, another son Arsalan and two other persons, namely Jamshed Ali and Muhammad Shahzad, against the theft of household articles, illegal possession of the house and causing injuries.

3. The learned counsel for the petitioner argued that the petitioner has been falsely implicated in the case with *mala fide* intention and ulterior motives. He further argued that the co-accused Jamshed Ali had purchased the house from the complainant by means of valuable consideration and out of sale proceeds of Rs.21,000,000/- Rs.90,00,000 have been paid to the complainant. He further argued that the petitioner never committed any overt act but rather has been dragged in the false accusation. It was further contended that the petitioner has been nominated in the case as a counter blast to FIR No. 214/2022 which was registered on 29.03.2022 against the complainant party. It was further averred that the petitioner was dispossessed from the house by force which is evident from the contents of FIR No. 214/2022. It was further contended that the learned Courts below failed to appreciate the evidence of payment made to the complainant pursuant to the sale agreement whereby he usurped huge amounts and refused to complete the sale transaction of the house in question, with respect to which a civil suit is also pending.

4. The Additional Prosecutor General opposed the bail petition and argued that the elder son of the complainant purchased the house to provide shelter to his father and mother and according to the prosecution case, the accused Jamshed and Ahtisham (petitioner)

forcibly dispossessed the complainant, however the possession of the house was restored on the intervention of the Deputy Commissioner. It was further contended that there is no question of any *mala fide* or ulterior motive, but on the contrary, due to unlawful acts and indecent behavior the FIR has been lodged by a father against his sons.

5. Heard the arguments. According to the minutiae of the case, initially the petitioner applied for pre-arrest bail in the Court of the Additional Sessions Judge, Karachi East which was declined *vide* order dated 22.07.2022 and similarly, the bail petition moved in the Sindh High Court was also dismissed. It is a case of attack by the accused persons while the complainant party was present in the house and caused injuries to Arish and Maqsood. Both the Courts rightly observed that, as per the description of the injuries jotted down in the medical certificate, the injured received the injury under Section 337-F(iv), PPC. The version of the eye witnesses fully supports the medical evidence and version of the complainant. There are also serious allegations against the accused persons of devising and designing a false agreement to sell with the sole intention of committing fraud and cheating the complainant and also misappropriating household items and the original file of the house. Offences under Section 324 and 380 are both non-bailable. So far as the applicability of Section 34 of PPC is concerned, it lays down the principle of constructive liability whereby if several persons would unite with a common purpose to do any criminal offence, all those who assist in the completion of their object would be equally guilty. The foundation for constructive liability is the common intention in meeting accused to do the criminal act and the doing of such act in furtherance of common intention to commit the offence. In order to constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand, rather the common intention presupposes prior concert and requires a prearranged plan. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act, but if he helps by his presence or by other act in the commission of an act, he would be

held to have himself done that act within the meaning of Section 34 PPC.

6. No specific details of any *mala fide* intention or ulterior motives have been alleged in the petition to explain why a father has set the law into motion against his own sons and lodged a false criminal case. On the contrary, the complainant with severe pain and agony explained all the facts of maltreatment, cruelty and harsh attitude by a son towards his parents. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. Sufficient material is present to demonstrate the petitioner's involvement in the case without any reasonable doubt and the expression "reasonable grounds" refers to grounds which may be legally tenable, admissible in evidence and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary or presumptuous. The petitioner has also failed to demonstrate that his father wants his arrest for some ulterior motives or to cause him any humiliation or to disgrace him in the public at large. It is an Islamic command to honor one's parents and obey them, respect their opinion and be kind to them instead of mistreating them, misbehaving, or adopting a harsh attitude towards them. The role or significance of a father figure is very pivotal and deep-rooted in the family system and nothing alleged before us to substantiate in true terms that the complainant has lodged the false crime report against his sons for any ulterior motives or with *mala fide* intention.

7. It is a well settled exposition of law that the grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with *mala fide* intention to harass the person with ulterior motives. By all means, while applying for pre-arrest bail, the petitioner has to satisfy the Court with regard to the basic conditions quantified under Section 497 of the Code of Criminal Procedure, 1898 ("Cr.PC") vis-à-vis the existence of reasonable grounds to confide that he is not guilty of the offence alleged against him and the case is one of further inquiry. In the case of Rana Abdul Khaliq Vs The State and others (2019 SCMR 1129), this Court held that grant of pre-arrest bail is an extra ordinary

remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; it is a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that the intended arrest is calculated to humiliate him with taints of *mala fide*; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of *mala fide*, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. While in the case of Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427), this Court has discussed the framework and guidelines for granting bail before arrest under Section 498, Cr.P.C. by the High Courts and Courts of Session. It was held that the exercise of this power should be confined to cases in which not only a good prima facie ground is 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. This Court laid down the following parameters for pre-arrest bail:-

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest must in the first instance approach the Court of first instance i.e. the Court of Sessions, before petitioning the High Court for the purpose.

8. In the wake of the above discussion, we are not inclined to enlarge the petitioner on bail. The Criminal Petition is dismissed and leave to appeal is refused. The findings and observations made are tentative in nature and confined only to the extent of pre-arrest bail and shall not prejudice the case of either party during the trial.

Judge

Judge

Karachi, the
22nd of March, 2023
Approved for reporting
Khalid.