

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE SHAHID WAHEED

CRIMINAL PETITION NO. 1442 OF 2022

(On appeal against the order dated 02.11.2022 passed by the Lahore High Court, Lahore in CrI. Misc. No. 60863-B/2022)

Muhammad Tanveer etc

... Petitioners

Versus

The State and another

... Respondents

For the Petitioner:

Mr. Salman Mansoor, ASC a/w petitioners
(Via video link from Lahore)

For the State:

Mirza Muhammad Usman, DPG
Mr. Hassan Farooq, DSP
Mr. Sadiq, SI

Date of Hearing:

01.12.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order dated 02.11.2022 passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 391 dated 30.08.2022 under Section 440 PPC at Police Station Raja Jang, District Kasur, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the FIR is that the complainant had cultivated the crop of mint in his land. On the fateful day and time, the petitioners along with another co-accused entered in his land and plowed and destroyed his entire crop and caused him a loss of Rs.125,000/-.

3. At the very outset, it has been argued by the learned counsel for the petitioners that the petitioners have been falsely roped in this case against the actual facts and circumstances due to *mala fides* of the complainant in

connivance with local police. Contends that the land, which is the root cause of the occurrence, does not belong to the complainant and the petitioners are in continuous possession of the property since long. Contends that civil litigation over the ownership/title of the property between the parties is pending adjudication and the present case is an attempt to pressurize the petitioners to gain ulterior motives. Contends that Section 440 PPC is not applicable as the petitioners are owners of the property in dispute. Lastly contends that the petitioners deserve to be granted the extraordinary concession of pre-arrest bail in the interest of justice.

4. On the other hand, learned Law Officer has defended the impugned order. It has been contended that the petitioners are specifically nominated in the crime report with a specific allegation of destroying the standing crop of the complainant, therefore, they do not deserve any leniency by this Court. Further contends that the petitioners filed successive bail applications before the learned High Court, which is not admissible under the law.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

As per the contents of the crime report, the allegation against the petitioners is that they plowed and destroyed the standing crop of mint from the land of the complainant and caused him a loss of Rs.125,000/-. However, it is the stance of the petitioners that the petitioners' party is owner of the land in question where the occurrence took place; they are in possession of requisite title documents and in-fact the complainant party was the aggressor. It is admitted position that a civil suit for declaration qua the land in question is still pending adjudication before the court of competent jurisdiction, which was filed about one year earlier to lodging of the instant FIR. In this view of the matter, the possibility of false implication just to pressurize the petitioners' side to gain ulterior motives cannot be ruled out. However, at this stage, we do not want to comment on this aspect of the matter, lest it may prejudice the case of either of the party. It is the Trial Court who after recording of evidence would decide about the guilt of the

petitioners and as to whether Section 440 PPC is applicable or not. Even otherwise, all the six petitioners have been ascribed the role of jointly causing a loss of Rs.125,000/- to the complainant. It is settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. The petitioners had earlier filed CrI. Misc. No. 59705-B/2022 seeking the relief of pre-arrest bail before the learned High Court, which was dismissed due to non-appearance of the petitioners on 03.10.2022. However, we have been informed that on that day, the petitioners got late but their counsel had duly informed the court. When the same was dismissed, the petitioners filed the second bail petition on the same day, which has been dismissed vide impugned order. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioners squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into their guilt.

6. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order dated 02.11.2022 and confirm the *ad interim* pre-arrest bail granted to the petitioners vide this Court's order dated 24.11.2022.

JUDGE

JUDGE

JUDGE

Islamabad, the
1st of December, 2022
Approved For Reporting
Khurram