

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2232 of 2024

Applicant : Nazim Ali Gopang son of Muhammad Bux Gopang,
through Mr. Muhammad Siddique Gopang, Advocate.

Respondent : The State
Mr. Qamaruddin Nohri, DPG Sindh duly assisted by
Mr. Ibbadul Hasnain, advocate for the complainant.

Date of hearing: 25.04.2025

Date of order : 05.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicant Nazim Ali Gopang seeks pre-arrest bail in a case bearing crime No. 59 of 2024 registered at Police Station Surjani Town, Karachi, for offences under Sections 394, 396, 302, 412, and 34 PPC. Earlier the bail of applicant was declined by the court of learned Additional Sessions Judge-III Karachi West.

2. Briefly, the case pertains to a brutal robbery incident dated 20.02.2024, during which the complainant's son was intercepted and fatally shot by unknown assailants on his resistance. The FIR was registered under Section 396 PPC, which deals with dacoity accompanied by murder, a capital offence.

3. During the investigation, co-accused Muhammad Imran was arrested in a separate case (FIR No. 202/2024 offence u/s 411/34 PPC). During interrogation, he disclosed that a mobile phone of Samsung make, allegedly snatched in the incident under present FIR, had been purchased by him from the present applicant, Nazim Ali Gopang. Relying upon this statement, the present applicant was implicated for dealing in stolen property linked with the underlying offence.

4. Learned counsel for the applicant argued that the applicant is not named in the FIR; that no direct or circumstantial evidence connects him with the commission of the robbery or murder; and that the entire case against him rests on a disclosure statement of a co-accused made in a different case, which, as per counsel, is legally inadmissible. It was further argued that no incriminating article was recovered from the applicant, nor was he subjected to identification. Counsel submitted that the dismissal of

his bail application by the learned trial Court was unwarranted and premised solely on the fact that other co-accused persons are in custody, which does not constitute a valid reason for depriving the applicant of anticipatory bail. It was also urged that the final challan has already been submitted, and the applicant is willing to face trial. Learned advocate for applicant also filed the statement along with the memo of 491 Cr.P.C filed by sister of applicant, memo of Cr. Misc. Application u/s 22-A & 22-B Cr.P.C bearing NO. 744/2023.

5. On the other hand, learned counsel for the complainant along with learned Deputy Prosecutor General opposed the bail application, contending that the applicant has been connected with the crime during investigation and that he failed to satisfactorily explain his role regarding the mobile phone traced to the deceased. It was further argued that the offence under Section 396 PPC is heinous and falls within the prohibitory clause of Section 497 Cr.P.C, and in the absence of mala fide or extraordinary circumstances, the concession of pre-arrest bail ought not to be extended. Learned counsel for the complainant also placed on record a statement accompanied by the mobile phone numbers pertaining to co-accused Naimatullah, Ubaidullah, Imran, as well as the present applicant. He further elaborated upon the memo of arrest and recovery in the connected offence registered under Section 411, PPC, relied upon the CDR, and referred to photographs depicting the accused together. In support of his submissions, he cited the judgment reported as *2004 SCMR 1373*, which has been duly appreciated by this Court for its relevance to the present facts.

6. Before discussing the merits of the instant bail application, I would like to emphasize upon the landmark judgment of the Honorable Supreme Court of Pakistan in case of *Rana Muhammad Arshad Vs. The State (PLD 2009 Supreme Court 427)*, wherein the Honorable Supreme Court of Pakistan was pleased to held,

(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 can not 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 motive, particularly on the part of the police; to cause irreparable humiliation to him and to B disagree 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 Session, before petitioning the High Court for the purpose.

7. The role ascribed to the applicant, though not of a principal offender in the murder or robbery, is not inconsequential. The applicant stands accused of having dealt in property obtained during the commission of a robbery-cum-murder. The mobile phone allegedly snatched from the deceased was later recovered from co-accused Imran, who, during investigation, disclosed that he had obtained it from the present applicant. This chain of custody, though established through a co-accused's statement, is not without significance at the bail stage. In such matters involving heinous offences like dacoity and murder, courts are to exercise heightened caution, particularly where recovery is traceable and the accused has allegedly played a facilitative role in concealing or distributing looted property. Although no recovery has been effected directly from the applicant since the applicant was not arrested and it has been held by the Honorable Apex Courts particularly in a case of ***Kamran Attaullah and another v. The State*** (2021 SCMR 449), that pre-arrest bail is an exceptional relief, not to be granted merely on the basis of lack of direct recovery or tenuous involvement. The Court held that such relief is warranted only where there is a clear demonstration of mala fide on the part of the police or the complainant. It emphasized that anticipatory bail is not meant to obstruct or pre-empt the normal course of investigation unless it is shown that the intended arrest is actuated by ulterior motives or is

manifestly unlawful. Moreover, the statement of co-accused is yet to be tested at trial, the surrounding circumstances and the gravity of the offence weigh against the grant of extraordinary relief. The bail jurisdiction under Section 498 Cr.P.C is not meant to circumvent lawful arrest in serious offences unless strong prima facie grounds of false implication or mala fide are apparent, which are not evident in the present case.

8. Furthermore, the applicant approached the learned Additional Sessions Judge, who, after considering the record, dismissed his bail application by recalling interim relief. A perusal of the order reveals that the learned Judge rightly noted that several co-accused are in custody, and the case of the present applicant is not distinguishable in terms of material collected so far. In that context, the learned Judge observed that the applicant too ought to be available for interrogation and trial in custody, especially considering the nature of the offence. It is also well settled that anticipatory bail is an exceptional relief and cannot be granted in routine, particularly in cases falling within the prohibitory clause. No mala fide on the part of the complainant or the investigating officer has been established on record. The rule of consistency, cited by the defence, in fact supports denial of bail where all similarly placed co-accused persons are in custody.

9. Be that as it may, the Hon'ble Supreme Court of Pakistan in a case reported as *Shahzada Qaiser Arfat alias Qaiser v. The State and another* (PLD 2021 SC 708) on the subject of bail before arrest provides an interesting and beneficial view through an approach reminiscent of the one pursued by a Full Bench of the Lahore High Court in, PLD 1949 Lahore 21 *Hidayatullah's case*. What could be read between the lines in the learned Full Bench's judgment has been eloquently documented and made conspicuous by the Hon'ble Apex Court. The Honorable Apex Court has held that the reluctance of the courts in admitting accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there was sufficient incriminating material available on record to connect the accused with the commission of the alleged offence, and his insistence only on showing malafide on part of the complainant or the police for granting pre-arrest bail did not appear to be correct being in conflict with the right to liberty and fair trial.

10. Given the seriousness of the charge, the material collected so far during investigation, and the stage of the case, I find no justification to extend the extraordinary concession of pre-arrest bail to the applicant. Accordingly, the instant application is dismissed and the interim bail earlier granted vide order dated 30.09.2024 to the applicant is recalled.

11. It is, however, clarified that the observations made herein are purely tentative in nature and shall have no bearing on the merits of the case at the time of trial.

J U D G E