

in the said judgment by any remotest imagination cannot be applicable for grant of bail before arrest to the accused guilty of double murder and directly nominated in the FIR by the eye witness, who is father of the deceased. The other case law relied upon by the counsel for the applicant (PLD 1968 SC 349) in the given facts and circumstances of this bail, is also not relevant for him. However, from this citation he has attempted to argue that “bail never to be withheld as a punishment” I am conscious of this proposition, but the Hon’ble Supreme Court in its same judgment has elaborately dealt with requirements of Section 496 to 498 Cr.P.C for the Court when bail application is being heard by the Court. Hon’ble Supreme Court has explained the circumstances, in the following terms in which bail can be refused or granted by Courts.

The first is that bail should never be withheld as a punishment. In cases of non-bailable offences coming before the Courts, grant of bail is a relief resting primarily in the discretion of the Courts to be exercised with due care and caution as a fundamental incident of exercise of judicial power, taking into account the facts and circumstances of each case. Orders on bail application should not be considered as routine orders. Involving as they do the liberties of the citizens, they must be carefully balanced and weighed in the scales of justice and the requirement of the relevant law, as contained in sections 496—498 of the Cr.P.C. There is however a further limitation on the Courts’ discretion in regard to cases of offences which are punishable with death or transportation for life, which is that the accused shall not be released on bail in such cases if there are reasonable grounds for believing that he has committed such an offence. “Reasonable grounds” is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, “grounds” strong a suspicion may be it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the Court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial. **If such grounds exists tending to connect the accused with the**

crime, bail should be refused, without the need to go into a deeper appreciation of the merits of those grounds and the evidence on which they are rested, which functions are to be assumed at the trial stage. However, if it is found that the charge is groundless, i.e., to say unsupported by any evidence or instead of the grounds being reasonable, their absurdity stands exposed on a plain view, or the charge on its face value is reduced to a minor one which is not punishable with death or transportation for life, as for example where it is a case of accidental and unintended death caused by simple hurt, the limitation on the Courts' discretion is removed which must then be freely exercised in favour of the grant of bail. Similarly where reasonable grounds are not disclosed but grounds do exist for a further investigation and inquiry into the guilt of an accused person, the case will fall under Section 497(2) of the Cr.P.C., in which case again bail should not be withheld.

3. Learned counsel for the complainant and Prosecutor Ms. Rehana Akhtar, have contended that the accused have been given specific role and complainant is eye witness of the incident in which his own son at his own house was killed at the hands of the applicants/accused. Even death body of second deceased was also found from the place where it has been mentioned in FIR No.193/2013. There is prima facie strong evidence available to connect the accused with the heinous crime of double murder. They further contended that nobody would like to protect murderer of his own son by falsely implication the applicants instead of the persons who murdered his son in front of his eyes. Therefore, under any circumstances, false implication is humanly impossible. Learned Addl. P.G has relied on the case law reported in **PLD 2009 SC 427 (Rana Muhammad Arshad ..Vs..Muhammad Rafique and another)** to show that the applicants have not been able to make out a case for bail before arrest. She has referred to the following passage from the said judgment.

9. Ever since then, the said interpretation so made, the said powers so found and the parameters so prescribed, have been regularly and repeatedly coming up for scrutiny by the

Superior Courts including this Court. But each time the matter was re-examined, the same was only re-affirmed. The said concept as it was initially propounded; as it developed and as the same stands today, may be summarized for the benefit of us all as under:-

- (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 disagree and dishonor 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 instant approach the Court of first instant i.e. the Court of Session, before petitioning the High Court for the purpose.

4. I have heard learned counsel for applicant, complainant and Addl. P.G and perused the record as well as case law and I have observed as follows:-

- (i) Specific role has been assigned in the FIR by the eye witness who has promptly lodged FIR and every aspect of the argument of

counsel for applicant repeated before me has been elaborately discussed by the trial Court in refusing bail before arrest.

(ii). At this stage learned counsel was required to establish malafide on the part of the complainant. As far as question of lodging FIR No.433/2011 by accused two years before the incident of murder of son of complainant before his eyes it cannot be treated as counterblast. No one can blast his own grownup son to lodge an FIR as counterblast to any other case.

(iii) FIR No.269/2013 lodged by the father of second deceased was lodged with delay of over 60 days after deliberations to implicate complainant of FIR No.193/2014. It has already been disposed of as 'B' class. This fact has not been disputed by the counsel for the applicants. He has, however, orally asserted that the Complainant has requested for reopening of investigation.

(iv) It is settled principle of law that enmity and doubt in the story of prosecution are not supposed to be examined at the stage of pre-arrest bail, such defense would be available to the accused at the trial or in case of bail after arrest.

(v) The requirements of bail before arrest as observed by the Hon'ble Supreme Court while giving guideline for the High Court and Sessions Court as reported in the case of **Rana Muhammad Arshad ..Vs..Muhammad Rafique and another (PLD 2009 Supreme Court 427)** have not been even touched by the learned counsel for the applicant.

5. In view of the above facts and circumstances this application for bail before arrest is, therefore, dismissed and the interim order of bail granted on 17.7.2014 is recalled. The applicants/accused may be arrested forthwith.

JUDGE

SM