

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr.B.A.No.S-235 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.

02.09.2019.

Mr. Hidayatullah Abbasi, advocate along with applicants.
Ms. Safa Hisbani, A.P.G.
Mr. Tahseen Ahmed Qureshi, advocate for complainant.
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Irshad Ali Shah J;- The facts in brief leading to passing of instant order are that the applicants on having been involved in case outcome of FIR Crime No.02 of 2019 U/Ss 506/2, 504, 337-A(i), F(i), 109, 342 P.P.C. of PS Tando Allahyar, sought for protective bail from this court by way of making such application as such they were admitted to protective bail for 10 days, subject to their furnishing surety in sum of Rs.50,000/-each and PR bond in the like amount to the satisfaction of Additional Registrar. The applicants could not surrender before learned trial court, within stipulated time and they again came before this court by way making an application U/S 561-A Cr.P.C by disclosing certain reasons therein which prevented them from surrendering before learned trial court. By disclosing so, they sought for interim pre-arrest bail, from this court instead of protective bail. Such application of the applicants was accepted by this court vide order dated 08.03.2019, they were admitted to interim pre-arrest bail and then notice was issued against the complainant.

2. It is alleged against the applicants that in furtherance of their common intention they by keeping complainant Mst. Sobia under

wrongful restraint, insulted, maltreated and threatened her of murder for that the present case was registered.

3. It is contended by learned counsel for the applicants that they being innocent have been involved in this case falsely by the complainant in order to satisfy her matrimonial dispute with them; all the penal sections applied in FIR are bailable excepting one 506/2 PPC which is falling under prohibitory clause of section 497(2) Cr.P.C and investigation of the case is over. By contending so, he sought for pre-arrest bail for the applicants on point of malafide. In support of his contention he relied upon cases of ***Mir Ahmed Gul and 2 others vs the State (1996 SCJ 775) and Meeran Bux vs the State and another (PLD Supreme Court 347)***.

4. Learned A.P.G for the State and learned counsel for the complainant have sought for dismissal of the instant application by contending that the applicants in the first instance will have to move to Sessions Judge having jurisdiction for grant of pre-arrest bail and it is the case of domestic violence.

5. In rebuttal to above, it is contended by learned counsel for the applicants that no doubt in the first instance one has to seek pre-arrest bail from Sessions Judge having jurisdiction, but such law is not absolute and in certain circumstances one could be admitted to pre-arrest bail by this court even. In support of his contention he relied upon case of ***Rais Wazir Ahmad vs the State (2004 SCMR 1167)***.

6. I have considered the above arguments and perused the record.

7. Order dated 08.03.2019, whereby the applicants on their application U/S 561-A Cr.P.C were admitted to interim pre-arrest bail has not been impugned either by the complainant or by the State. In that situation, same could not be reviewed or modified at this stage. On merits, there could be made no denial to the fact that, all the penal sections applied in FIR are bailable excepting one U/S 506/2 PPC which is not falling within prohibitory clause of section 497(2) Cr.P.C. One of the applicant (Mst. Maqsooda Bano) has also been found innocent by the police. The investigation of the case is over. The parties are disputed over matrimonial affairs. In that situation, the applicants are found to be entitled to grant of pre-arrest bail on point of malafide.

8. In view of above, the interim pre-arrest bail already granted to the applicants is confirmed on same terms and conditions.

9. Applicant Mst. Maqsooda Bano is absent under intimation, she to be informed of this court by the co-applicants.

10. The instant application is disposed of accordingly.

JUDGE