

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No.S- 840 of 2021

| | |
|------|-------------------------------|
| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|-------------------------------|

Applicant: Imdad Ali
through Mr. Zulfiqar Ali Chang, Advocate

Complainant: Mst. Phapul
through Mr. Ghulam Murtaza Soomro, Advocate

Ms. Safa Hisbani, Assistant P.G Sindh

Date of hearing & decision: 08.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- The Applicant Imdad Ali Vighio, through the captioned bail application, has called in question the rejection of his Anticipatory Bail Application by the learned Additional Sessions Judge-I, Dadu vide order dated 15.09.2021.

2. Facts, in brief, are that complainant Mst. Phapul lodged FIR No.141 of 2021 with Police Station A-Section Dadu for offenses under sections 452,337-A(I),504,506/2,354,337-F(i) PPC, alleging therein that applicant/accused Imdad and co-accused Abbas by caste Vighio are his nephews, who committed fraud of Rs.30,00,000/-(thirty lac) with his son Kamran for in the name of Ayaz Soomro Al-Shahbaz Motorcycle Scheme; and, on-demand of return of their amount they used to quarrel; and, issue threats of dire consequences to complainant party. On 31.07.2021, the accused filed an application for protection against the complainant's sons; and, after attending the court her sons reached the house, it was about noontime, complainant, her sons Kamran and Fahad were present in the house it was about 12.30 noon, they saw accused Abbas Ali armed with a pistol, Imdad Ali armed with Danda and one unidentified person armed with Danda who will be identified if seen again, criminally trespassed in the house of the complainant. Accused Abbas aimed his pistol towards Kamran by stating that why they were demanding

amount from them, in the meantime accused Imdad caused lathi blows to her son Kamran on back, while accused Abbas Ali dragged her from her hairs and caused kicks and fist blows, resultantly she fell on the ground. Complainant beseeched them in the name of Almighty Allah then accused persons went away while issuing threats of dire consequences. Hence this FIR.

3. Mr. Zulfiqar Ali Chang, learned counsel for the applicant has argued that there is a dispute between the parties over money transaction, such dispute is civil, but the complainant has malafidely dragged the applicant/ accused in criminal litigation. He further argued that there is a contradiction between the contents of FIR and the contents of application u/s 22-A & B Cr.PC moved by the complainant before the learned Court/Justice of Peace. He also argued that there is a delay of about one month in lodging FIR without plausible explanation. He also argued that there is no medical certificate of injuries allegedly received by the complainant. He further contended that all the sections areailable except section 506/2 and 452 PPC, which do not fall within the prohibitory clause of section 497 Cr. PC. He prayed that interim pre-arrest bail already granted to the applicants may be confirmed on the same terms and conditions.

4. Ms. Safa Hisbani learned A.P.G, assisted by learned counsel for the complainant has opposed the bail plea of the applicant with vehemence and argued that the applicant/accused is well nominated in FIR. She further argued that the applicant/accused along with co-accused duly armed with pistol and Danda criminally trespassed in the house of complainant issued threats of dire consequences; and, caused injuries to complainant party. She argued that the PWs have fully supported the contents of FIR in their statements U/S 161 Cr.PC; that the delay in lodging FIR has been fully explained by the complainant; that no malafide on the part of complainant and police is pointed out by the applicant/accused regarding his false implication. He lastly prayed that interim pre-arrest bail already granted to the applicant/accused may be recalled; and, his pre-arrest bail application may be dismissed. It is urged by them, that no indulgence of this court is required under such circumstances.

5. I have heard learned counsel for the parties and gone through the record.

6. The tentative view of the learned trial Court, while rejecting the pre-arrest bail of the applicant is as follows:

“Perusal of record reflects that the name of applicant/accused does transpire in FIR with a specific role in perpetuating the offence. The applicant/accused has been fully implicated in the commission of offence by the witnesses in their statements U/s 161 Cr.P.C recorded during course of the investigation. There is no reason to believe that the applicant/accused has been booked falsely by the complainant. The delay in lodging FIR is no ground for admitting the applicant/accused on pre-arrest bail. No doubt the offences with which the applicant/accused is charged do not fall within the prohibitory clause but in exceptional circumstances bail can be refused even if the offence does not fall within the prohibitory clause of section 497 Cr.P.C. Moreover, the defence has failed to establish any malafide on the part of the complainant. It is a settled proposition of law that deeper appreciation is not permissible at the bail stage and only tentative assessment is to be made while deciding the bail application. Prima facie sufficient material is available on record connecting the applicant/accused in the commission of a non-bailable offence, therefore applicant/accused Imdad Ali has failed to make out his case for the extra-ordinary concession of pre-arrest bail.

In the light of the reasons mentioned above, I am of the humble view that the applicant/accused Imdad Ali son of Ghulam Rasool Vighio has failed to make out his case for confirmation of bail. Resultantly interim pre-arrest bail already granted to the applicant/accused on 03.09.2021 is hereby recalled and his pre-arrest bail application stands dismissed. The surety of the applicant/accused is discharged from his liability. Let the copy of this order be sent to SHO concerned for information.”

7. Coming to the merits of the case, the applicant is nominated in the FIR with specific attribution of causing injury on the back of the son of the complainant and the said offense attracts the provisions of Section 337-A(i) and F(i) PPC. The injury attributed to the applicant is prima facie corroborated by the statement of injured as well as other prosecution witnesses in their statements recorded under section 161 Cr. P.C, and prima facie the medical certificate could determine corroboration to the ocular account. pre-arrest bail being an extraordinary concession is meant to protect the innocent persons whose arrest appears to be tainted with any malice or ulterior motives of the complainant and the police, but here in this case at

least to the extent of the present applicant, no such element could be established from the record.

8. The Honourable Supreme Court in its various pronouncements has observed that the concept of prearrest bail is an extra-ordinary relief, which is limited to rare cases based upon trumped-up charges rather it has to be extended sparingly. To avail such relief, it is obligatory to establish that the prosecution has been launched, which is based upon malafides, ulterior motives and if it is materialized, it would certainly cause irreparable loss to his reputation. The practice to grant ad-interim bail is an extension of such a remedy to act as a shield to protect innocent persons facing highhandedness of individuals or authority against frivolous litigation. The term ad-interim is a misnomer as it has fallen in practice. It is worth mentioning that ad-interim is not mentioned in any provision rather this idea has been derived from the Order XXXIX Rules 1&2 of Code of Civil Procedure, 1908 ("Code of 1908). The rationale to grant ad-interim bail as though synonymous with passing a prohibitory injunction, however, the concept of ad-interim bail is more precious as compared to the prohibitory injunction. In the former, the liberty of the person is involved whereas in the latter, only propriety rights are in question.

9. The provision of Section 498 Cr. P.C is neither ancillary nor subsidiary to Section 497 Cr. P.C but is an independent Section, however, a bare reading of the language of sub-section (2) of Section 497 Cr. P.C provides considerations for grant of bail under section 497(2) Cr. P.C, practically merged section 497/498 Cr.P.C. into one aspect qua concept of pre-arrest bail persuading it to act conjointly in all fairness. The practice for grant of extra-ordinary relief has passed through the transitory period with divergent interpretation qua its scope since its inception, however, the law is not static rather it is growing day by day. This Court while handing down a salutary judgment in the case of Meeran Bux vs. The State and another (PLD 1989 Supreme Court 347) enunciated the concept of pre-arrest bail which was more innovative, liberal, crafted in consonance with the intent of the legislature, hence, it has conceptually widened its scope in its entirety, elaborating its concept in the spirit of section 497/498 Cr.P.C. It was reiterated in another judgment of the Honourable Supreme Court in the case of Syed Muhammad Firdaus and others v.

The State (2005 SCMR 784). The Honourable Supreme Court virtually introduced a broadened mechanism of interpretation to adjudge the element of malafide or malice at the touchstone of merits of the case.

10. In the present case, the applicant who has ascribed the injury to the son of complainant on his back (simple), trespassed their house on the issue of the business transaction, was granted pre-arrest bail by learned Additional Sessions Judge Dadu-1, which was later on recalled vide order dated 15.9.2021.

11. Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail, this Court can consider the merits of the case in addition to the element of malafides/ulterior motives which has to be adjudged in the light of law laid down by the Honourable Supreme Court in the case law stated supra.

12. For what has been discussed above, the applicant is not found entitled to the extraordinary concession of pre-arrest bail. His bail plea through the instant bail application is dismissed. consequently, interim pre-arrest bail granted to the applicant by this court vide order dated 23.9.2021 is recalled.

13. Observation recorded hereinabove is tentative shall not prejudice either party at the trial.

JUDGE