

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr. B. A. No. S – 424 of 2020.

DATE

ORDER WITH SIGNATURE OF JUDGE

07.08.2020.

FOR HEARING OF MAIN CASE.

Mr. Ahmed Ali Jarwar Advocate for the applicant.
Applicant is present on interim pre-arrest bail.
Ms Rameshan Odh, A.P.G. for the State.

NAIMATULLAH PHULPOTO, J.

Applicant/accused Arshad Ali

seeks pre-arrest bail in Crime No.54 of 2020, registered at Police Station 'A' Section Shaheed Benazirabad, for offences under section 324, 337-A(i), 337-F(i), 337-F(vi), 337-L(ii), 34 PPC.

2. Previously, applicant/accused applied for pre-arrest bail before learned III-Additional Sessions Judge, Shaheed Benazirabad, the same was rejected by him vide order dated 29.04.2020. Thereafter, applicant has approached to this Court.

3. Learned Advocate for applicant Arshad Ali has mainly contended that ingredients of Section 324 PPC are not attracted in this case; that co-accused Nadeem and Aslam have already been granted pre-arrest bail by the trial Court and case of the applicant/accused is almost identical; that there was delay in lodging of the FIR for which no plausible explanation has been furnished. It is contended that ocular evidence is contradictory to medical evidence. Lastly, it is submitted that police intends to arrest applicant/accused with malafide intention.

4. Ms Rameshan Odh, A.P.G. opposed the pre-arrest bail application of applicant Arshad Ali. It is argued by her that case of the co-accused to whom concession of the bail has been extended was quite distinguishable, as specific role of firing upon injured Awais has been attributed to the applicant/accused Arshad Ali. It is further argued that firearm injury has been caused by the applicant to the injured upon the leg near vital part of the body. Learned A.P.G. has also submitted that during investigation applicant did not join the investigation and interim challan was submitted in which the present applicant/accused has been shown as absconder. It is submitted that ingredients for grant of pre-arrest bail are not satisfied in this case and prayer for grant of pre-arrest bail has been opposed.

5. I have carefully heard the learned counsel for the parties and perused the relevant record including medical certificate. In the FIR it is alleged that applicant Arshad Ali fired upon injured Awais from his pistol, which hit him upon the leg near vital part of the body; ocular evidence is apparently corroborated by the medical evidence. Case of co-accused Nadeem and Aslam is quite distinguishable from the case of the applicant Arshad Ali. Applicant/accused failed to join the investigation. Moreover, the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C. Other contentions raised by learned counsel for applicant require deeper appreciation of evidence, which is not permissible at this stage.

6. Concession of pre-arrest bail could not be allowed to an accused person unless the court felt satisfied about seriousness of the accused's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local police. Reliance is placed upon the case of **MUKHTAR AHMAD v. THE STATE** reported as [2016 S.C.M.R. 2064]. Relevant portion is reproduced as under:-

“2. After hearing the learned counsel for the parties and going through the record we have observed that according to the FIR Tanveer respondent had caused an injury to Mukhtar Ahmed complainant on his left thigh with a chhurri and Asif Ali respondent was also armed with a chhurri and he had caused an injury to Mukhtar Ahmed complainant on his left ankle. The injuries caused by the respondents attracted the provisions of sections 337-F(ii) and 337-F(iv), P.P.C. respectively which offences are non-bailable. It was also alleged in the FIR that the respondents had snatched, away a sum of Rs. 10,000/- from the complainant and the offence under section 379, P.P.C. invoked in the FIR in that respect is also non-bailable. It is not disputed that the eye-witnesses mentioned in the FIR, including the injured complainant, have so far stood by their statements made before the police fully implicating Tanveer and Asif Ali respondents in the alleged offences and also that prima facie the medical evidence lends support to the allegations leveled by the prosecution against the said respondents. We have gone through the reasons prevailing with the High Court for admitting the said respondents to pre-arrest bail and have found that the, said reasons do not commend themselves for approval. The said respondents had been admitted to pre-arrest bail by the High Court primarily upon the consideration that the offences allegedly committed by them did not attract the prohibitory clause contained in subsection (1) of section 497, Cr.P.C. The High Court had failed to appreciate that the said consideration is hardly relevant to a case wherein what is sought is pre-arrest bail which is an extraordinary concession. This Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person unless the court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police but not a word about this crucial aspect of the matter is to be found in the impugned orders passed by the High Court in the present case. It had also not been appreciated by the High Court that an earlier petition filed by Asif Ali respondent before the High Court seeking pre-arrest bail in the selfsame criminal case had been dismissed by the said Court on account of absence of the said respondent despite being on ad-interim pre-arrest bail. Such conduct displayed by the said respondent on the earlier occasion ought to have, in the absence of any valid justification, sufficed to disentitle him to an exercise of discretion in his favour in the second round. The investigating officer present before the Court has informed that during the investigation the allegations leveled against Tanveer and Asif Ali respondents have been found to have been fully established. He has maintained that the weapons of offence are yet

to be recovered from the custody of the said respondents and for that purpose physical custody of the respondents is required by the local police.”

7. Grant of pre-arrest bail is an extraordinary remedy, rooted into equity, to protect the honour and freedom of the innocent in criminal cases actuated by abuse of process of law for oblique motives and purposes; this protection cannot be extended in every run of the mill criminal case without grievously hindering the investigative process.

8. For the above stated reasons, no case for grant of pre-arrest bail is made out. Accordingly, order dated 12.05.2020, whereby the applicant/accused was admitted to interim pre-arrest bail is hereby recalled and instant bail application is dismissed.

9. Needless to mention that observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

A.