

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.165/2017

Date Order with signature of Judge

For hearing of bail application.

16.05.2017

Mr. Ghulam Akbar Jatoi advocate for applicants alongwith applicants.
Mr. Muhammad Iqbal Awan, APG alongwith I/O P.I. Raja Muhammad Shahbaz, PS Model Colony.
Ms. Sadia advocate for complainant.

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The applicants/accused Asif and Rauf both sons of Abdul Razzaque were granted *interim* pre-arrest bail by this Court vide order dated 06.02.2017 in crime No.25/2017 of PS Model Colony, Karachi, for committing offences under section 336-B, 324 PPC read with section 7 ATA 1997.

2. The allegations against applicants/accused, as per contents of FIR lodged by complainant Bilal Zahoor on 26.01.2017 are that, on 24.01.2017 he was available near his house where applicants came and threw an acid, a corrosive substance on his face as a result of which he received burns injuries on his face and thereafter was removed to hospital for his first aid treatment where police recorded his statement under section 154 Cr.P.C. and same was incorporated in FIR.

3. Learned counsel for applicants mainly argued that applicants were involved by complainant due to enmity as according to him applicants had made applications against complainant to police which annoyed complainant and therefore he in collusion with the police managed the present case against them. He *lastly* added that nothing is to be recovered from applicants hence handing over physical custody of applicants to police would not advance any cause of justice.

4. Learned APG contends that sentence provided for subject crime under section 336-B PPC is life imprisonment which cannot be less than 14 years.

5. We have heard the respective *parties* and have also gone through record *carefully*.

6. Since, it is by now well settled principle of law that *criterion* for grant of pre-arrest bail are *entirely* different from that of *post-arrest* bail. The relief of *pre-arrest bail*, being extra-ordinary in nature, is available *only* to protect innocent persons from harassment, humiliation and disrespect which *too* if it is *prima facie* established that it (case crime) is result of *malafide* on part of police or complainant. In short, while seeking *pre-arrest bail*, it is the duty of the accused not only to establish but also to prove *mala fide* on part of the Investigating Agency or the Complainant. Reference may be made to the case of Muhammad Sadiq & Others v. The State & another (2015 SCMR 1394) wherein it is held as:

“7. Considerations for pre-arrest bail are totally different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is duty of accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offences with mala fide and ulterior motive.”

The *criterion* for grant of pre-arrest bail was elaborated in the case of Rana Muhammad Arshad v. Muhammad Rafique & another (PLD 2009 SC 427) which was also followed in the case of Muhammad Sadiq & Ors (supra)

wherein too affirmed the *legal position* that bail before arrest cannot be granted unless person seeking it, satisfies conditions specified under section 497(2) of the Cr.P.C but also *mala fide* or ulterior motive.

7. We have perused the contents of FIR wherein applicants/accused are shown to have thrown an acid, a corrosive substance on the face of complainant as a result of which he received burn injuries on his face. The applicants / accused are *specifically* named in the FIR which *prima facie* links the applicants / accused with commission of the offence particularly when such *allegation* finds strength and support by medical evidence. I would also add here that 'one may choose the manner and fashion for committing a *bodily* harm to his *rival* which (manner and fashion) would reflect the *intention*. A deliberate act of throwing '**acid**' on face *itself* speaks that the *culprit* not only wants to harm the person but also wants to make him a 'walking mark of his act' therefore, such *like* acts/offences should always be treated in a different manner.

8. Further, at this point, a referral to Final Medical Legal report dated 24.01.2017, relied by learned APG to show *bona fide* of case crime, is made hereunder:-

"FINAL REPORT
MEDICO-LEGAL CENTRE CIVIL HOSPITAL KARACHI
FINAL SUPPLEMENTARY MEDICO-LEGAL REPORT

Reference ML No.349/17 dated 24.01.17

Name Bilawal Zahoor s/o, d/o, w/o Malik Zahoor

Police station Model Colony, H/O Acid burns

Result of observation: (*not readable*) re-examined on 7.05.17 **the acid burns** scars on forehead, face, left ear, left eye shrinkage in size. scars front & neck **disfigurement positive**, (*not readable*) reserved if any declared as other hurt sub section one."

The report *prima facie* shows burning of the *victim* with 'acid' which one *normally* would not dare for false involvement. One, who has approach or excess to police, would not require for putting *himself* under any danger for involvement of his *rivals*.

9. Mere mentioning of the *words* of mala fide against the police or complainant in *bail application* would not satisfy the lust of the term 'establish mala fide' which the accused, seeking pre-arrest bail, is required to establish because the term 'establish' would require much more than 'mere words'. In the instant case, the applicants *though* have pleaded a specific motive against the complainant but have placed nothing on record to substantiate their *own* plea / stand hence same is of no help for the applicants / accused to satisfy *first* pre-requisite for grant of pre-arrest bail.

10. A reference to the case of Malik Nazir Ahmed v. Syed Shams-ul-Abbas (PLD 2016 SC 171) would satisfy the *last* submission of the learned counsel for the applicants / accused wherein it is held as:

'3. We note that respondent no.1 had been admitted to pre-arrest bail by the learned Judge-in-Chamber of the High Court primarily upon the ground that an offence under section 489-F PPC, did not entail any recovery to be affected from the accused person and if recovery is not to be affected from an accused person in a criminal case then he cannot be refused pre-arrest bail in such case. While holding so the learned Judge-in-Chamber had referred to his own order passed in the case of Abdul Sattar v. The State and another (PLD 2013 Lahore 173) wherein similar views had earlier on been expressed in some other case. We have found the said approach adopted by the Hon'ble Judge to be militating against the scheme of the Code of Criminal Procedure because it had not been appreciated by the Hon'ble Judge that arrest of an accused person during the investigation of a criminal case is not meant only for effecting recovery from his possession but such arrest is made for the purpose of investigating the circumstances of the case and collecting evidence and recovery, where required, is only one of the components of the investigation. If the view held by Hon'ble Judge of the High Court is allowed

to hold the field then pre-arrest bail may not be refused to an accused person even in a case of rape or in a case of murder by throttling or even in a case of planning for terrorism where recovery may not be relevant and that surely was never the intention of the law. While investigating an offence physical custody of an accused person may be required by the investigating agency for ascertaining and verifying the circumstances being alleged by the complainant party and even for confirmation of the circumstances of the case put forth and advanced by the accused person in his defence. It cannot, therefore, be said with any generalization that an investigation into a criminal offence is meant only for effecting a recovery from the accused person and in a case where no recovery needs to be effected such accused person cannot be arrested or cannot be refused bail. Such generalization by the Hon'ble Judge of the High Court has, therefore, been found by us to be not a proper generalization to receive approval of this Court. **In this view of the matter the legal position declared by the Hon'ble Judge in the reported case of Abdul Sattar (supra) is disapproved.** Apart from what has been observed above we note that the view held by the Hon'ble Judge of the High Court **eliminates the consideration of mala fide on the part of the police or the complainant party which consideration is one of the prerequisites for pre-arrest bail in a case involving a non-bailable offence. ...'**

Since the tentative assessment of the available material *prima facie* establishes that the applicants / accused are linked with the offence with which they are charged as well failure of applicants / accused to establish *malafide* on part of the police and complainant are sufficient to disentitle the applicants / accused for an *extra-ordinary* relief therefore their application stands dismissed.

11. I/O present alongwith APG, seeks custody of the applicants. Accordingly custody is handed over to the I/O with direction to produce the applicants/accused before concerned Court with supplementary challan.

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