

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1979 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

18.01.2023

Syed Ali Ahmed Tariq, Advocate along with Applicant (on bail).
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.
Mr. Manzoor Ahmed Rajput, Advocate along with Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Sabahat Ahmed seeks his admission on pre-arrest bail in Crime No.913/2022 of Police Station Preedy, Karachi, under Section 298-B, 298-C & 34 PPC. The case has been challaned by the police which is now pending for trial before the Court of Civil Judge & Judicial Magistrate-XXV, Karachi (South) where charge against accused has also been framed on 14.01.2023. Per learned counsel, case before the trial Court is now fixed on 04.02.2023.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submitted that the applicant belongs to Ahmadi sect, therefore, apprehends imminent danger to his life; hence, he did not approach to the Court of Sessions / first forum; however, has been appearing before the trial Court, without fear. In support of his contention, he has placed reliance upon the cases of (i) *ABDUL RASHEED Versus THE STATE (PLD 2003 Karachi 682)*, (ii) *RIAZ AHMED GOHARSHAHI Versus THE STATE (PLD 2000 Karachi 6)*, (iii) *RAIS WAZIR AHMED Versus THE STATE (2004 SCMR 1167)* & (iv) *Mirza MUHAMMAD DIN NAZ Versus THE STATE through Advocate-General, Sindh (1994 P.Cr.L.J 747)*.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposed the bail application on the ground that opportunity should always be given for exercise of such discretionary jurisdiction before the lower Court first as

exercise of inherent jurisdiction is dependent on non-availability of alternate efficacious remedy. She, therefore, opposed the bail application vehemently.

5. Learned counsel for the complainant submitted objections over the bail application and has placed his reliance upon case of *ZAHEERUDDIN and others Versus THE STATE and others (1993 SCMR 1718)*. He has also annexed such documents as well as photographs, taken on record. He further submitted that the applicant has been appearing before the trial Court, without fear. As far as, apprehension shown is concerned, learned counsel after having instructions from the complainant, who was also present in Court, stated that no such activity shall be carried out by the complainant or his associates which may entail into any undue occurrence.

6. Heard learned counsel for the parties and perused record. It is settled principle of law, that as evolved by the precedent law must not lose sight is that where two Courts have co-extensive or concurrent jurisdiction, then propriety demands that jurisdiction of Court of the low grade is to be invoked in the first instance and opportunity should always be given for exercise of such discretionary jurisdiction to the lower Court first. As far as, apprehension shown by the applicant that he might be put under hot water by the complainant as well as his allied/aids, is concerned, he has been appearing before the trial Court, without fear and no such incident had ever occurred which could bother him to file any complaint or application before trial Court or any other forum. Moreover, counsel for the complainant along with complainant, has also undertaken not to take law in their hands in any manner. Therefore, apprehension shown is not much of consequence.

7. It is also settled law that one cannot be allowed to bypass and or circumvent ordinary remedy in normal Court of the event and High Court does not exercise inherent jurisdiction unless there is a gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of Court or to secure the ends of justice. As far as, inherent jurisdiction as advanced by learned counsel for the applicant, is concerned, jurisdiction under Section 561-A Cr.P.C is neither alternative, nor additional in its nature and is to be rarely invoked only to secure ends of justice so as to seek redressal of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary Courts of criminal procedure. This kind of jurisdiction is extraordinary in nature and it is not to do substantial justice; it is neither akin to appellate nor the revisional jurisdiction. It is now well entrenched legal position that where a power is co-extensive with two or more Courts, in

ordinary circumstances, propriety of law demands that the litigant must first seek remedy in the Court of lowest jurisdiction.

8. This order shall cease to have its effect on 06.02.2023, or whenever the Applicant approaches / surrenders before the Court having jurisdiction, whichever is earlier.

9. I have examined the cases, relied upon by learned counsel for the applicant and found that facts of the same are distinguishable. Consequently, upshot of above discussion is that no direct pre-arrest bail can be granted more particularly when the alternate remedy is available; hence, instant bail application is converted into protective pre-arrest bail application, which is hereby allowed and the applicant is granted twenty (20) days' protection on the same terms and conditions of surety as well as bond executed by the applicant before this Court, with directions to file appropriate application before the Court having jurisdiction.

10. Since, learned counsel for the applicant has shown apprehension regarding undue circumstances at the hands of complainant party, complainant present in Court, has undertaken not to take law in their hands, is again warned to maintain law and order situation; besides, SSP Karachi (South) is hereby directed to provide special security to the Courts below as and when hearing is fixed in respect of present crime, without fail.

11. As stated, the charge has been framed, therefore, trial Court is also directed to ensure expeditious trial and conclude it within shortest possible time, under intimation to this Court through MIT-II. A copy of this order be communicated to trial Court through learned Sessions Judge, Karachi (South), over fax today, for compliance. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A