

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-373 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>20.04.2023</u>	For orders on office objection. For hearing of main case.
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Mr. Ayaz Muhammad Ghanghro, advocate for the applicant along with applicant, who is present on interim pre-arrest bail.

Mr. Shahid Ahmed Shaikh, A.P.G. Sindh.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely, Kashif Ali Bux seeks pre-arrest bail in Crime No.05/2023, registered at Police Station Bachalpur for the offence under sections 392 PPC. Earlier the bail plea of the applicant/accused was declined by the learned Sessions Judge, Shaheed Benazirabad vide order dated 06.04.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case; that there is delay of about 23 days in lodgment of FIR and no plausible explanation has been furnished; that there is enmity between co-accused Nizamuddin and the complainant on account of some personal affairs and said accused Nizamuddin has been admitted to bail by the learned trial Court; that the applicant/accused is Farmer of co-accused Nizamuddin and only for this reason he has been implicated falsely in the instant case; that in fact no such incident has taken place nor prosecution story suggest happening of such incident. Lastly, learned counsel prayed for confirmation of interim pre-arrest bail to the applicant/accused.

4. On the other hand, learned A.P.G. Sindh has vehemently opposed the bail application.

5. Heard and perused the record.

6. Admittedly the name of the applicant appears in the FIR with specific role that he along with co-accused robbed the motorcycle valuing about Rs.90,000.00 [Rupees ninety thousand only], original letter of motorcycle and cash amount from the complainant party. So far the contention

raised by learned counsel that the FIR is lodged after delay of about 23 days is concerned, for which the complainant himself disclosed that he has tried to recover the motorcycle but subsequently he has lodged the FIR against the accused. Furthermore, the principles of grant of pre-arrest bail and post-arrest bail are totally different. In the matters of pre-arrest bail, the Courts are supposed to examine as to whether the accused has proved *mala fide* on the part of complainant or prosecution or his false implication in the case, which is basic ingredient for grant of pre-arrest bail. In the instant case, learned counsel for the applicant has failed to show any *mala fide* on the part of complainant. No ill will or enmity has been pleaded by the applicant/accused. At bail stage, only tentative assessment is to be made. Prosecution has, *prima facie*, furnished sufficient material to connect the applicant with the commission of offence and PWs have supported the prosecution version. In such circumstances, learned counsel for the applicant/accused has failed to make out the case for grant of bail to the applicant/accused. Accordingly, applicant/accused does not deserve for concession of pre-arrest bail, as such, instant pre-arrest bail application is **dismissed** and the interim pre-arrest already granted to the applicant/accused by this Court vide order dated 18.04.2023 is hereby recalled. Let intimation with regard to dismissal of instant bail application be communicated to SHO PS Bachalpur, District Shaheed Benazirabad.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE