

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 871 & 890 of 2023

Applicant in Cr. : Abdul Hadi s/o. Anwar Ali, through
B.A. No. 871 of 2023 Mr. Muhammad Khalid Khan Arshi, Advocate

Applicant in Cr. : Tahir Ali Khan s/o. Shoukat Ali Khan,
B.A. No. 890 of 2023 through Mr. Irfan Zia Siddiqui, Advocate

Respondent : The State, through Ms. Rahat Ehsan,
Addl, Prosecutor General along with S.I.P
Imtiaz Ahmed of P.S. Alfalah, Karachi.

Complainant : Mrs. Shagufta @ Abiha w/o. Muhammad Javed
Ayubi, through Mr. Asif Rasheed, Advocate
holding brief for Mr. Nafees Khattak, advocate.

Date of hearing : 13.06.2023
Date of order : 13.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both Criminal Bail Applications as the same, being arisen out of Crime/ F.I.R. No. 96/2023, registered at P.S. Alfalah, Karachi under section 147, 148, 149, 354, 365, 427, 452, 506-B, 511, P.P.C., have been heard by me together.

2. Through listed Criminal Bail Applications, applicants/accused Abdul Hadi s/o. Anwar Ali and Tahir Ali Khan s/o. Shoukat Ali Khan have sought pre-arrest bail in the afore-mentioned crime. Their earlier application for grant of same relief bearing No. 1428 of 2023 was dismissed by the learned VIIth Additional Sessions Judge, Karachi-East, vide order dated 15.04.2023. The applicants were admitted to interim pre-arrest bail by this Court vide orders, dated 19th & 20th April, 2023, respectively, and now the matters are fixed for the confirmation of interim bail or otherwise

2. As per F.I.R. lodged on 22.03.2023 by complainant Mrs. Shagufta @ Abiha w/o. Muhammad Javed Ayubi, between the night of 19/20 December, 2022 at about 0000-0100 hours, her husband's female partner/co-accused Naheed Anwar,

applicants Tahir Ali & Hadi and co-accused Faheem, Samad, Nazia, Rohi, Nilofer and other 20/25 persons forcibly entered her house; they broke the door of lounge by kicks, damaged the furniture and dispenser and hit her husband with kicks and punches and also gave threats of dire consequences.

3. Heard, record perused.

4. Offences for the purpose of bail have been categorized into two categories i.e. “bailable offences” and “non-bailable offences”. In the cases of bailable offences, the person accused has an indefeasible right to grant of bail subject of course to satisfactory sureties being offered. In the instant case, it is an admitted position that after the investigation, police has submitted the Chalan against the applicants for the offence(s) under section 147, 148, 149, P.P.C., out of them offences under first two penal provisions of the P.P.C, are bailable while section 149, P.P.C. does not create a new or separate offence but only declares vicarious liability of all members of an unlawful assembly for the acts done in prosecution of the common object. It implies that every members of an unlawful assembly is responsible for the act committed by any other member of that assembly in the prosecution of common object. So far question of bail for the alleged offence is concerned, if the offence committed falls under category of “bailable offences”, the bail shall be granted to each of the accused persons as matter of right.

5. The only contention of learned counsel for the complainant for opposing the confirmation of interim pre-arrest bail is that the element of humiliation, harassment, mala-fide, intention to disgrace and dishonor are missing in the instant case. I am afraid, the right of bail in “bailable offence” is not restricted to the extent of post-arrest bail but the same is also available to an accused seeking pre-arrest bail. If a person is otherwise entitled to bail, no useful purpose shall be served by putting him firstly behind the bars and then allowing him bail. Needless to mention here that if a case for grant of bail is made out either on the ground of

grant of bail as a matter of right or on any other principle of law, bail before arrest should be allowed.

5. For the foregoing facts and reasons, the interim bail already granted to the applicant vide orders, dated 19th & 20th April, 2023, is confirmed on the same terms and conditions.

6. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case, the applicant(s) misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

Both the listed Cr. Bail Applications stand disposed of.

JUDGE

Athar Zai