

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application 2511 of 2023: Kashif Tasleem & Others
vs. The State

For the Applicants : Mr. Rasheed Ashraf Mughal,
Advocate

For the State : Mr. Khadim Husain, APG

Date of hearing : 29.12.2023

Date of announcement : 29.12.2023

ORDER

Agha Faisal, J. This issue before this Court is whether pre arrest bail could be granted in a disposed of Criminal Bail Application; wherein protective bail had been granted to the applicants earlier in time.

2. Briefly stated, this bail application was preferred seeking protective¹ bail for the applicants. On 03.11.2023, protective bail was granted; for a maximum period of seven (7) days. On 10.11.2023, an application for extension was heard and the period of bail was extended for a further period of ten (10) days. On 20.11.2023, another application² for extension of time was heard, however, the said application (in a disposed of criminal bail application) was converted into an application for pre arrest bail and the same was granted as an interim measure, pending confirmation or otherwise.

3. At the very onset, applicant's counsel was confronted as to how pre arrest bail could be obtained in a disposed of application for protective bail, *inter alia* in view of the essence of section 369 CrPC³.

4. The applicant's counsel articulated that this Court had ample power per 561-A CrPC, read with its writ jurisdiction, to entertain the applicants in the manner undertaken. Learned APG submitted that the grant of pre arrest bail herein was *prima facie* devoid of jurisdiction and could not be sustained.

¹ The handwritten annotation "protective" is manifest from the prayer clause; where under the counsel for the applicant has appended his signature.

² MA 14053 of 2023.

³ 369. Court not to alter judgment. Save as otherwise provided by this Code or by any other law for the time being in force or, in case of a High Court by the Letters Patent of such High Court no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

5. Heard and perused. It is trite law that no court has power save as that conferred by the Constitution / law, as enunciated by Article 175(2) of the Constitution⁴. Section 369 CrPC specifically precludes the alteration or review of a judgment⁵; save for correction of clerical errors. Section 561-A Cr.PC⁶ merits invocation to prevent abuse of process or to secure the ends of justice, however, it ought not to be employed to countermand a clear command of the law. Even otherwise nothing has been placed before this court to suggest that unless the applicants' application was entertained there would be an abuse of process of court or that the ends of justice would be in peril

6. *Muhammad Ali Mazhar J* has succinctly elaborated upon the essence and applicability of section 369 CrPC in *Abdul Sattar Dero*⁷, albeit in the context of a final judgment. The order granting pre arrest bail herein *prima facie* amounts to review of the earlier order disposing of the matter, since the same would be considered to be resurrected and interim relief having been awarded in the interregnum. This Court has not been assisted with any law permitting such a resuscitative review, hence, respectfully remains unable to accord any concurrence, by way of perpetuation.

7. The present bail application stood disposed of while granting protective bail to the applicants. While there was no impediment upon the applicants to seek any form of further relief, to which they may be entitled, no case could be set forth to sustain interim pre arrest bail in an already disposed of bail application.

8. This bail application already stands disposed of in terms of the relevant order⁸, cited supra, therefore, the only matter before this Court is MA 14043 of 2023. In view of the reasoning herein deliberated, this application is found to be misconceived, hence, hereby dismissed.

Judge

⁴ Article 175(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

⁵ This Court is cognizant of the law that this section applies differently to bail orders so as to not preclude the possibility of further permissive applications for bail, however, such is demonstrably not the case here.

⁶ Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

⁷ *Abdul Sattar Dero vs. The State* reported as *PLD 2019 Sindh 418*.

⁸ Granting protective bail.