

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1128 of 2023

Applicant : Rizwan S/o Mir Ahmed
Through Mr. Inayatullah Lashari,
Advocate

Complainant : Ali Johar S/o Muhammad Salam
Through Mr. Muhammad Akram, Advocate

Respondent : The State
Through Mr. Talib Ali Memon,
Asstt. Prosecutor General, Sindh.

Date of hearing : 10.08.2023

Date of order : 10.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.152/2023 registered under Sections 302, 34 PPC at PS Zaman Town, after his bail plea has been declined by Additional District & Sessions Judge-I, Karachi East vide order 11.05.2023.

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

3. Per learned counsel, the applicant is innocent and has falsely been implicated in this case; that co-accused have been granted by the learned trial Court; that the role assigned against the applicant/accused is identical to the co-accused; that due to family dispute, the applicant has been implicated in this case otherwise he has not committed any offence; that except dying declaration which too was not recorded in presence of the I.O. or Medical Officer, there is no evidence available on record which connects the applicant with the

commission of offence. He lastly prays for confirmation of pre-arrest bail to the applicant.

4. On the other hand, learned counsel for the complainant vehemently opposes for confirmation of bail and states that after the dissolution of marriage of the daughter of deceased vide order dated 26.01.2023 by the learned Family Judge, Malir, the applicant has committed this offence. He has also read over the statement of witnesses Asim and Kamran which shows that in their presence, the deceased Muhammad Salam has disclosed the name of the present applicant, as such, sufficient evidence is available against him with the commission of offence. He lastly prays that the applicant is not entitled for confirmation of bail and relies upon the cases reported as 2007 YLR 699 and 2022 YLR 754. Whereas, learned APG supports the arguments advanced by learned counsel for the complainant and has relied upon a case law reported as 2010 SCMR 55.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. The case of the prosecution is that on 03.02.2023 PWs namely Muhammad Kamran and Muhammad Asim found one Muhammad Salam in injured condition and being neighbourers, they brought him in his house where the deceased Muhammad Salam in injured condition disclosed before both the PWs so also his wife and one Mst. Khadija that he has received firearm injury at the hands of applicant Rizwan. In his dying declaration, the deceased has implicated the present applicant in the commission of offence. Both the PWs in their 161 Cr.P.C. statement have admitted that the deceased disclosed that in his murder, the applicant is involved. In the case of Majeed vs. The State (2010 SCMR 55), the Hon'ble Supreme Court of Pakistan has held that no specific forum for making dying declaration is required and it can be made before a private person. Dying declaration is not legally required either to be read over or to sign by its maker.

Dying declaration should be influenced free. In order to prove dying declaration the person by whom it was recorded should be examined. In the instant case, the I.O. recorded the statement under Section 161 Cr.P.C. of both the PWs in which they have admitted that the deceased has made dying declaration before them and implicated the present applicant with the commission of offence.

7. The ocular evidence finds support from the medical evidence so also 161 Cr.P.C. statements of the witnesses. No malafide or ill-will or enmity has been pleaded by the applicant/accused, which could be the ground for false implication in this case. So far as the contention raised by learned counsel for the applicant that the dying declaration has not been recorded in presence of the I.O. or Medical Officer, the same has no force in light of the judgment cited above. At bail stage, only tentative assessment is to be made and deeper appreciation is not permissible under the law. The sufficient evidence is available on record to connect the applicant with the commission of alleged offence.

8. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that

intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

9. In view of the above, the instant bail application is **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicant/accused vide order dated 25.05.2023 is hereby recalled.

10. 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/accused on merits.

Kamran/PA

JUDGE