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PRESENTED ON
21.03.2023


Deputy Registrar (Judl.)

IN THE HIGH COURT OF SINDH AT KARACHI

14/0

Cr. Bail Application No. /2023

Khursheed Ahmad
S/o Muhammad Zaman
House No. R-130, Green Park City,
Muhallah Quaidabad, District Malir, Karachi.....Applicant/Accused

Versus

The State.....Respondent

FIR No.144/2023
U/S: 494, 495 PPC
P.S: Shah Latif Town

BAIL APPLICATION UNDER SECTION 498 CR.P.C

It is most humbly and most respectfully prayed on behalf of the applicant/accused above named that this Honourable Court may very graciously be pleased to enlarge him on bail, on consideration of following facts and grounds: -

[Copy of FIR with its English translation are attached herewith and marked as annexure-A to A/1]

Brief facts of the case are as under: -

As per verbatim of the complainant, I am residing at the address mentioned above in the column No.2 of the FIR and retired from Army, on 12-06-2021 my close relative Muhammad Zaman S/o Ali Zaman demanded relation hands of my daughter Aisha Bibi aged 22 years for his son Khursheed. Therefore, I took time for consultation with my family members regarding the said relation. Thereafter, with consent of my family members and my daughter we agreed to give hand of my daughter to them. On 05-01-2022 at 2100 hours my daughter married with the Khursheed at Cheema Marriage Hall located at sector 22-B at Shah Latif Town and after, Nikah the Rukhsati was taken place on same time. Nearly after, 06 months of said marriage my daughter got angered with the Khursheed and was residing with me. Meanwhile, wife and daughter of my son in law namely Khursheed Ahmed came at my home who disclosed her name to be Fatima Bibi and disclosed that she is third wife of Khursheed and this is my mother whom with I came here and she further disclosed before contracting marriage my husband has already two other wives you can get information if wish so. Thereafter, I personally continued gathering information and I came to know that my son in law had concealed his earlier three marriages from my daughter Aisha with whom he contracted fourth marriage and

- ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.623 of 2023

Date	Order with signature of Judge
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1. For order on MA No.5449/2023
2. For hearing of bail application

11.7.2023

Mr. Rehman Ghani Khattak, advocate for the applicant
Mr. Siraj Ali Khan, Additional PG
Mr. Muhammad Shafqat, advocate for the complainant

Through this bail application, the applicant Khursheed Ahmed seeks pre-arrest bail in Crime No.144/2023, registered under Sections 494 and 495 PPC at PS Shah Latif Town. The applicant was earlier admitted to interim pre-arrest bail granted vide order dated 13.2.2023 by the learned Sessions Judge Malir Karachi, which was thereafter recalled vide order dated 24.2.2023 passed by learned 1st Additional Sessions Judge (MCTC) Malir Karachi, hence this bail application.

2. The learned counsel for the complainant contends that the applicant has contracted fourth marriage when the marital bond between the previous wife and applicant was / is in existence, therefore, he is not entitled to the concession of extraordinary relief as provided under Section 498 Cr.P.C. He further submitted that sufficient evidence against the applicant is available to connect him to an offense under Section 494 and 495 PPC. Learned counsel further submitted that in the Nikahnama applicant disclosed himself to be unmarried with is a misstatement to deceive the family of the girl, therefore, interim bail so granted to the applicant vide order dated 24.03.2023 may be recalled.

3. Learned APG has endorsed the viewpoint of the complainant on the premise that the offense under Section 494 and 495 PPC is heinous, therefore, the applicant is not entitled to the concession of pre-arrest bail.

4. Learned counsel for the applicant has refuted the stance of the complainant on the premise that no doubt marrying another wife without the permission of the previous wife is prohibited under the law. He further submitted that under the Muslim Family Law, the cognizance can only be taken on a written complaint by the Union Council concerned in which the narration of full facts in respect of polygamy should be given. however, in the present case the applicant has been booked under Section 494 and 495

PPC without permission of the Court or Union Council concerned for which the complainant has failed to seek permission from the concerned Union Council. He next argued that prima-facie, the FIR is delayed for about more than one year and the fact of the previous marriage of the applicant was in knowledge of the complainant as well as his daughter Ayesha Bibi but the complainant lodged FIR on behalf of his daughter, which such a dealy which shows his malafide intention just to cause applicant's humiliation and disgrace in the public at large. Learned counsel emphasized that the question whether the applicant is habitual in polygamy as the marriage of the applicant with Ayesha Bibi was his fourth marriage and whether the applicant has concealed such facts these aspects could only be determined after recording the evidence of both parties. At this stage, this Court is not in a position to give concrete findings at the bail stage. He next argued that after lodging the F.I.R. the investigation was conducted and police submitted the challan against the applicant/ accused, under sections 494 and 495 P.P.C The same also does not fall within the prohibitory clause of section 497 Cr. P.C. There is no denial to the fact that the case of the applicant/ accused before the trial Court is based on family dispute and the trial court will look into every aspect of the case. He further argued that so far the contention of the learned counsel for the complainant that the principles for the grant of pre-arrest bail are different from the principles governing the grant of post-arrest bail concerned, suffice to say that if the applicant/ accused is otherwise entitled to the bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him post-arrest bail. He lastly prayed that the ad-interim bail, granted to the applicant/ accused, vide order dated 24.03.2023 is liable to be confirmed.

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

6. The accusation against the applicant is that he contracted marriage with Mst Ayesha Bibi daughter of the complainant without disclosing his previous marriage with another girl; and, no consent from his wife was obtained, such report of the incident was made to Shah Lateef Town Police Station Karachi to the above effect, his earlier bail application was rejected by the learned 1st Additional Sessions Judge (MCTC) Malir Karachi, on the ground that name of the applicant appeared in the aforesaid crime with the specific role of contracting fourth marriage without the consent of his previous wife. The applicant has already been admitted to interim pre-arrest bail by this Court vide order dated 24.03.2023.

7. The alleged marriage between the spouses took place on 05.01.2022 and was reported to police on 03.02.2023 with a delay of more than one year. The question of disclosure of previous marriage and without consent of the present daughter of the applicant needs to be looked into by the trial Court after recording evidence of Mst. Ayesha Bibi and documentary evidence are available with the prosecution on the subject point.

8. On perusal of the record and tentative assessment of the material available, it appears that the dispute between the parties seems to be of a family nature. It is well-settled law that mere mention of the name of a person in FIR would not justify the rejection of his prayer for anticipatory bail without considering other ingredients required to be taken into view in this context. The aforesaid ground is also considered as one of the grounds for the grant of anticipatory bail. Since the applicant has approached this Court for extraordinary relief in terms of Section 498 Cr. P.C. based on the factum that the complainant with malafide intention has lodged the FIR against him though the complainant was well aware of the factum of the previous marriage of the applicant.

9. On perusal of the record and tentative assessment of the material available, it appears to be a case of reasonable doubt and further inquiry. Reason for approaching this court and the anticipated humiliation on account of family rivalry as explained in the preceding paragraph is sufficient to consider the case of the applicant for extraordinary relief.

10. Keeping in view the entire facts it appears that the applicant/accused has made out a case for grant of pre-arrest bail. The question of whether the cognizance can only be taken on a written complaint by the Union Council concerned in which the narration of full facts in respect of polygamy should be given and the trial Court has to see whether ingredients of section 494 and 495 PPC are attracted or otherwise.

11. Before parting with this order it is observed that the main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society if there is an apprehension of repetition of offense or commission of any other untoward act by the accused. Therefore, to make the case of an accused person fall under the exception to the rule of the grant of bail in offenses not covered by the prohibitory clause of Section 497 (1) Cr. P.C., the prosecution has to essentially show

from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail.

12. The basic principle in bail matters in such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of:

- (a) his absconding to escape trial;
- (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or
- (c) his repeating the offense keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of the offense alleged.

13. In view of the above, it is also essential to note that a court that deals with an application for a grant of bail in an offense not falling within the prohibitory clause of Section 497(1) Cr. P.C must apply its judicious mind to the facts and circumstances of the case and the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offense only when it finds any of the above-noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle.

14. The Supreme Court has already cautioned the learned courts below in Muhammad Tanveer v. State PLD 2017 SC 733, in the following terms:

"Once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception, then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding [under Article 189] on all Courts throughout the country including the Special Tribunals and Special Courts."

15. In the present case, the learned trial Court has failed to adhere to the principle of law enunciated by the Honorable Supreme Court, as discussed supra. In the light of the principles set forth by the Honorable Supreme Court in post-arrest bail matters, as discussed supra, the impugned order passed by the learned trial Court is thus not sustainable under the law and liable to be reversed on the aforesaid analogy. On the aforesaid proposition, I am fortified with the decisions of the Supreme

~~Court~~ rendered in the cases of Tariq Bashir v. State PLD 1995 SC 34; Imtiaz Ahmad v. State PLD 1997 SC 545; Subhan Khan v. State 2002 SCMR 1797; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488.

16. In view of the above facts and circumstances of the case, the applicant has made out for a grant of pre-arrest bail in terms of Section 498 Cr. P.C. for the reasons that the complainant has shown his eagerness to get the applicant arrested in the aforesaid crime to settle the score with the applicant.

17. For the aforesaid reasons, the instant bail application is accepted and the interim order dated 24.03.2023 passed by this Court whereby the applicant was admitted to bail in Crime No.144/2023 of Police Station Shah Lateef, District Malir, Under Section 494 and 495 PPC is hereby confirmed on the same terms and conditions.

18. The observations recorded hereinabove are tentative and shall not prejudice the trial. It is clarified that if the applicant/accused misuses the concession of bail, the trial Court shall be at liberty to proceed against the applicant/accused as per law, who shall attend the trial Court regularly.

19. These are the reasons for the short order dated 11.07.2023, whereby the bail of the applicant was confirmed.

Shehzad Soomro*

JUDGE
17/7.