

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1701 of 2023

Date	Order with signature of Judge
For hearing of bail application	

21.8.2023

Khawaja Saif-ul-Islam advocate for the applicant along with applicant Shaikh Muhammad Kalam.

Mr. Shahid Khan, advocate for Pakistan Railways along with AS¹/₁₀ Shahzad Nazeer, Railway Police Karachi City

Mr. Muhammad Ahmed. Assistant Attorney General

Mr. Muntazir Mehdi, Additional PG

Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to post-arrest bail in F.1.R No. 80/2023, registered under Section 122(iii) of the Railway Act at Police Station Railway Police, Karachi South. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge IX (South) Karachi vide order dated 02.08.2023 in Cr. Bail Application No. 2399/2023.

2. The accusation against the applicant is that he in connivance with his accomplices started illegal occupation and possession on Pakistan Railway? land and constructed the pucca/hard wall near KM-25/8 at WZN Station Yard in KCR Section. The matter was taken up and the complainant came to Police Station Railway Police. Karachi South, and lodged a report on 07.08.2023.

3. The applicant being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicant has been falsely implicated in the case. Learned counsel for the applicant submitted that the allegations against the applicant are not only bogus and baseless but also require proper inquiry, demarcation, and identification of railway land: that the prosecution of the applicant in the present case is nothing but based on dishonesty and malafide and even from the contents of the FIR no case is made out against the applicant.

4. Learned APO assisted by learned counsel representing die Pakistan Railway has opposed the bail plea of the applicant on the ground that the Railway land has been occupied by the applicant who has constructed a pucca/boundary wall over the subject land without permission and/or lease/title documents. which amounts an offense tinder Section 122(3) of

Pakistan Railway Act 1890. He further submitted that the offense does fall within the prohibition contained under Section 497M Cr.P.C. He next submitted that applicant is not entitled to the concession extraordinary relief and the allegations against the applicant are supported by the statement recorded under Section 161 Cr. P.C. and other material collected during the investigation. He next argued that the applicant is an illegal occupier of the subject land and he has no right to enter into the premises of Pakistan Railway as mentioned in the Charge-Sheet, therefore. Section 122(iii) of Pakistan Railway Act is fully effected in the matter as such the bail plea of the applicant has rightly been declined by the trial Court.

5. I have heard the arguments advanced by the learned counsel for the parties and have gone through the material placed before me.

6. Prima fade government/Pakistan Railway land is being encroached upon and without collusion with the officials in government departments and the same could not be materialized, however in the present case the tentative assessment of record reflects the following aspects of the case:-

a. *The alleged (offence occurred without date and time however the same was reported to P.S. Railway Police Karachi City, District South on 08.07.2023.*

b. *As per the complainant, the applicant has constructed the pucca/hard wall KCR Section near KAI-2518 at 11ZN Station Yard the site was inspected on 08.07.2023 and the complainant fantod that the entire Railway land was covered with fresh wall and lire-Stock /cattle, etc. was tried inside.*

c. *The memo of place of the incident and recovery of concrete bricks and other materials was prepared an 09.07.2023.*

d. *Pictures (of the site inspection were taken wherein it prima facie shows that the wall was constructed on the subject land.*

e. *The applicant has not placed on record any claim of the subject land allegedly belonging to Pakistan Radom' however he has relied upon K-Electric Rill rosily, which has no hearing in the case in hand.*

f. *The applicant has also been booked in two FIRS Nos. 83 and 84 of 2023 of P. S. Railway Police Karachi under Section 148/1491186,324,354 PPC and read with Section 7 of the A TA, 29 RRAO 2002 and 23(i)A of Sindh Arms Act.*

g. *Pre-arrest bail of the applicant hat been declined by the trial Court vide order dated 24.08.2023 on the ground that the applicant failed to bring his ease within the scope of Section 497(1) Cr. P.0 but also failed to establish and malafide on the part of the complainant disentitling him to the concession of extraordinary relief under Section 498 Cr.P.C.*

7. Primarily, pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail. The applicant as per the result of the investigation has been found connected with the alleged offense of

occupying, indulging and constructing the pucca house on the Pakistan Railway land, without title documents. It appears front the record that the officials of Pakistan Railway has inspected the site and has taken possession of the subject property and subsequently lodged a criminal claim against the applicant for an offense punishable under Section 122 (3) of the Railway Act 1890. which is a cognizable and non-bailable offense as per provision of Pakistan Railway Act, 1890.

8. Prima facie, sufficient material has been collected against the applicant to demonstrate the applicant's involvement in the case without any reasonable doubt and his cooperation in the investigation is material, however. he has approached this Court under Section 498 Cr.P.C. without alleging any malafide on the part of police or complainant merely uttering the word 'malafide' or 'ulterior motive' on the part of Pakistan Railway and/or police is not sufficient to attract the provision of Section 498 Cr.P.C., the reason is that hail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of the Code of Criminal Procedure, not just this hut in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police: to cause irreparable humiliation to him and disgrace and dishonor him, which factum is missing in the present case for the simple reason that applicant has been unable to show any title of the subject land to claim possession and/or construction raised thereon the land belongs to Pakistan Railway.

9. In view of the above. prima facie, no malafide has been attributed to the complainant and/or investigation officer. Thus, the applicant/accused is not entitled to a grant of pre-arrest bail at this stage in the light of material collected by the prosecution during the investigation since he is on run as such the investigation has been hampered as suggested by the Investigating Officer present in Court , who also requests for his custody. The present bail application is dismissed and interim pre-arrest bail already granted to the applicant by this Court vide order dated 03.8.2023 is hereby recalled. The applicant is directed to surrender to the concerned Investigating Officer for further investigation in the matter.

10. Needless to mention here that observations made hereinabove are tentative and. the trial Court while deciding the case on merits shall not be influenced by said observations.

JUDGE