

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application S-717 of 2024

Hotman and another

vs.

The State

For the Applicants : Mr. Ahsan Gul Dahri, Advocate

Date of hearing : 04.07.2024

Date of announcement : 04.07.2024

ORDER

Agha Faisal, J. (1) Urgency granted. (2&3) Learned counsel undertakes to place on record certified copies, true translations etc. during the course of the week; application disposed of in terms herein. (4) The applicant seeks pre-arrest bail, in respect of F.I.R. 136 of 2023, registered on 28.05.2023 before P.S.Tando Adam City, pertaining to offence/s under Section/s 506/2, 447, 449, 504, 34 P.P.C.

2. Learned counsel submits that the applicants surrendered before the Court of the Additional Sessions Judge-I, Tando Adam, however, vide order dated 28.06.2024, in Cr. Bail Application 617 of 2024, the applicants' application for pre-arrest bail was dismissed, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, reproduction whereof is eschewed herein², it is observed as follows:

a. The allegation levelled against the applicants ostensibly does not invoke the prohibitory clause and even otherwise the accused were not even implicated in the FIR. The said facts can be discerned the following excerpt from the order dated 28.06.2024.

"2. Learned Counsel for the applicants/accused contended that the applicants/accused are innocent and have falsely been implicated in this case with malafide intention and ulterior motives. There is civil dispute between the victim of this offence with his brother Zahid Dero over which the official of police on the instance of alleged victim lodged such false FIR. Nothing incriminating has been recovered from the possession of the applicants / accused. In FIR, all the accused are unknown persons; however, they are named in challan charge sheet with malafide intention. All the sections applied in the FIR do not fall within prohibitory clause

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

whereas Section 506(ii) PPC is not attracted and has been misapplied by the police. There are counter cases between the parties therefore it will be determined at the time of trial as to who was aggressor and aggressed upon therefore case against the present applicants / accused is of further enquiry. Further no any specific role has been assigned by the present applicants / accused in the commission of alleged offence. Lastly, prayed to confirm the bail of applicants/accused.

3. In contra, learned DDPP for the State opposed for grant of bail to the applicants whereas learned private Counsel for the complainant submitted that applicants are fully involved in the crime and they have occupied portion of the house of complainant forcibly. The complainant took the pictures as well as recorded videos of the applicants through drone camera as well as pictures of the applicants were uploaded on Tik-tok by the applicants themselves. Such pictures are produced by the learned counsel for the complainant so also produced USB in which videos and pictures are very much clear of the applicants possessing arms. It is also shown in the USB that police also raided at the portion of the house of complainant and present applicants were arrested but police on the instance of political influence have not shown their arrest in their record and after change of investigation, on the basis of evidence of modern devices, police have challaned them and shown them as absconders. He prayed that applicants are not entitled for extra ordinary relief and rejected the bail.

4. I have given due consideration to the arguments of the both parties and perused the material available on record. Learned counsel for the applicants was unable to show any malafide of the complainant to falsely involve the present applicants as learned counsel for the applicants also admitted the dispute is between the brothers of the complainant who are Dero by caste. However, present applicants are belonging to different castes, therefore, involvement of the present applicants by complainant in the dispute between the brothers over the portion of house is not tenable, as to why complainant would involve present applicants who are of different casts and have nothing to do with the dispute between the brothers. But as per pictures and videos available with the complainant and produced in USB clearly reveals that applicants are hired persons and occupied the portion forcibly for which police also arrested them as per video recording and pictures but police have not shown their arrest malafidely or with ulterior motive.

5. For granting extra ordinary relief of pre-arrest U/S 498 Cr.P.C, the applicants / accused must have shown malafide and humiliation at the hands of the police which they failed to show with any such malafide of the complainant. Hence present applicants prima facie per digitally admissible evidence available with the complainant and produced in the Court are fully involved, therefore, applicants are not entitled for extra ordinary relief of pre-arrest bail, hence instant bail application being devoid of merits is rejected and interim bail granted earlier vide order dated 24-05-2024 is hereby recalled and surety discharged. Let the copy of this order be sent immediately to the Investigation Officer of the case/concerned SHO.”

- b. Learned counsel for the applicant pleaded entitlement to the concession of pre-arrest bail on the premise that the cited

offences do not attract the non-prohibitory clause; applicants are not even named in the FIR; dispute is *prima facie* private in nature and incrimination of the applicants is erroneous at best, perhaps intended to pressurize and humiliate them.

- c. The FIR does not appear to contain the name of the applicants; nothing incriminating is stated to have been recovered from them; present reliance is on some tik-tok video, authenticity weightage is yet to be determined by the trial court; and the matter is said to fall within the non-prohibitory clause.
- d. It has been reasoned that the basic foundation of prosecution remains to be laid, hence, demonstrably qualifying the present case within the remit of Section 497(2) of the Code of Criminal Procedure 1898. Therefore, denial of anticipatory bail in the present circumstances, in an arguably fit case for consideration of post arrest bail³, on a technicality would be unconscionable and unmerited⁴.
- e. Learned counsel has articulated a *prima facie* case for consideration of judicial refuge⁵, envisaged to protect the innocent / vulnerable from the rigors of abuse of process of law and harassment⁶; so as to protect human dignity and honor⁷ from the humiliation of incarceration, arguably intended for designs extraneous and *mala fide*.

4. The contentions raised merit deliberation, therefore, notice may be issued to the office of the Prosecutor General Sindh, Investigative Officer and the Complainant. In the intervening period the applicant is admitted to interim pre-arrest bail, subject to furnishing solvent surety in the sum of Rs.30,000/- (Rupees Thirty Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the Additional Registrar of this Court. To come up on 06.08.2024 for confirmation hereof or otherwise.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

³ *Muhammad Ramzan vs. Zafar Ullah & Another* reported as 1986 SCMR 1380.

⁴ *Khalil Ahmed Soomro & Others vs. The State* reported as PLD 2017 Supreme Court 730; *Hassan Jameel Ansari & Another vs. National Accountability Bureau & Another* reported as 2012 YLR 2809 (Division Bench Judgment of this Court).

⁵ Per Qazi Muhammad Amin J. in *Ghulam Farooq Channa vs. The Special Judge ACE (Central I) Karachi & Another (Criminal Petition 169 of 2020)* approving *Hidayat Ullah Khan vs. The Crown* reported as PLD 1949 Lahore 21 (Per Cornelius J.).

⁶ *Ajmal Khan vs. Liaqat Hayat & Another* reported as PLD 1998 Supreme Court 97.

⁷ *Murad Khan vs. Fazle Subhan & Another* reported as PLD 1983 Supreme Court 82.