

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

Criminal Bail Application No.S-746 of 2024

Shujja Muhammad

vs.

The State

For the Applicant : Mr. Abdul Majeed Magsi,
Advocate

Date of hearing : 10.07.2024

Date of announcement : 10.07.2024

ORDER

Agha Faisal, J. (1) Urgency granted. (2, 3 & 4) This matter pertains to pre-arrest bail, in respect whereof F.I.R.44 of 2024 was registered on 27.03.2024 before P.S. B-Section District Tando Muhammad Khan, citing offence/s under Section/s 365, 34 P.P.C.

2. Learned counsel submits that the applicant surrendered before the Court of the Additional Sessions Judge-I, Tando Muhammad Khan, however, vide order dated 03.04.2024, in Criminal Bail Application 150 of 2024, the applicant's 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 leveled against the applicant was by a lady, Mst. Sawera, that her husband has been abducted by the accused named in the said FIR. The allegation leveled against the applicant that he is one of the abductors.
- b. Learned counsel pleaded entitlement to the concession of pre-arrest bail on the premise that interim pre arrest bail ought to be granted without touching the merits of the case. It was further added there is [13] day delay in filing the FIR and further that the applicant is related to the abductee.
- c. The jurisprudence developed since at least 1949 in the *Hidayat Ullah's case*³ demonstrates that the concession of pre-arrest bail could only be considered under settled principles and certainly not without touching the merits of the case, which is parlance commonly applied while considering protective bail. In so far as the merits of the case are concerned, the delay or any proximity of the parties, is a matter is to be decided by the trial Court.

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.

³ Per *Cornelius J. in Hidayat Ullah Khan vs. The Crown* reported as PLD 1949 Lahore 21.

- d. *Admittedly*, the applicant is nominated in the FIR with a specific role; ocular corroboratory accounts are available; material collected by the IO is indicative; and the matter falls within the prohibitory clause. These observations are delineated in the order of the trial Court and no effort was made to displace the same by the learned counsel.
- e. Learned counsel has been unable to demonstrate any infirmity with the order, denying pre arrest bail to the applicant, rendered by the learned subordinate Court particularized *supra*⁴.

4. The Supreme Court⁵ has maintained that grant of anticipatory bail, to an accused required in a cognizable / non-bailable offence, is an extraordinary judicial intervention in an ongoing or imminent investigative process as it interferes with the mechanics of investigation and prosecution. It has also been observed that while the statute does not expressly provide for such a remedy, it has always been recognized in our jurisprudence⁶, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honor from the humiliation of arrest, intended for designs sinister and oblique⁷.

It has, however, been illumined that this remedy, oriented in equity, may not be invoked in every criminal case⁸, *prima facie* supported by material and evidence, constituting a cognizable / non-bailable offence and warranting arrest, which is an inherent attribute of the dynamics of the criminal justice system with a deterrent impact; it is certainly not a substitute for post arrest bail⁹.

5. In the present facts and circumstances the learned counsel has been unable to set forth a *prima facie* case for consideration of judicial refuge and it has not been demonstrated that incarceration is intended for designs extraneous, including harassment¹⁰ and humiliation¹¹, and *mala fide*¹².

6. In view hereof it is the assessment of this Court that the learned counsel for the applicant has been unable to make out a fit case¹³ for grant of the extra ordinary¹⁴ concession of pre-arrest bail, hence, the present application is hereby dismissed. 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

⁴ Per *Saleem Akhtar J.* (as he then was) in *Nasir Muhammad Wassan vs. The State* reported as 1992 SCMR 501.

⁵ Per *Qazi Muhammad Amin J.* in *Ghulam Farooq Channa vs. The Special Judge ACE (Central I) Karachi & Another (Criminal Petition 169 of 2020)*.

⁶ Per *Cornelius J.* in *Hidayat Ullah Khan vs. The Crown* reported as PLD 1949 Lahore 21.

⁷ *Abdul Aziz Memon vs. The State* reported as 2020 SCMR 313.

⁸ *Gulshan Ali Solangi vs. The State* reported as 2020 SCMR 249.

⁹ *Rana Abdul Khaliq vs. The State* reported as 2019 SCMR 1129.

¹⁰ *Murad Khan vs. Fazle Subhan & Another* reported as PLD 1983 Supreme Court 82.

¹¹ *Ajmal Khan vs. Liaqat Hayat & Another* reported as PLD 1998 Supreme Court 97.

¹² *Mukhtar Ahmed vs. The State* reported as 2016 SCMR 2064.

¹³ *Zia Ul Hassan vs. The State* reported as PLD 1984 Supreme Court 192.

¹⁴ *Muhammad Sadiq & Others vs. The State* reported as 2015 SCMR 1394.