

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1423 of 2024

Date *Order with Signature of the Judge*

Applicant : Qadeer Hussain Shah son of Muhammad Hussain Shah through M/s Waseem Iqbal & Muhammad Nasir Advocates a/w applicant on bail.

Complainant : Nemo.

The State : Ms. Rubina Qadir, DPG, Sindh.

Dated : 12th September, 2024.

ORDER

Muhammad Saleem Jessar, J.:- Through instant bail application, applicant Qadeer Hussain Shah son of Muhammad Hussain Shah seeks his admission to pre arrest bail in Crime No. 267/2020 registered with Police Station North Nazimabad, Karachi under sections 489-F PPC. The case had been challaned which is now pending adjudication before the Court of Civil Judge & Judicial Magistrate-XII, Karachi-Central (trial Court) vide Criminal Case No. Nil/2022 (re-the State Versus Qadeer Hussain Shah). The applicant had filed an application under Section 497 Cr.P.C before the trial Court which by means of order dated 17.12.2020 was declined and later he filed Criminal Bail Application No.2354 of 2020 before the Court of Sessions which subsequently was assigned to Addl. Sessions Judge-VII/MCTC-02, Karachi-Central. Learned Addl. Sessions Judge, after hearing the parties, had admitted the applicant on post arrest bail by means of his order dated 23.12.2020. After getting released on bail, the applicant could not continue his appearance before the trial Court, therefore, bail granted to him by learned Addl. Sessions Judge, was recalled. Hence, as and when he learnt about pendency of instant case, he approached Court of Sessions through anticipatory bail application bearing No.1065 of 2024 which was declined in terms of its order dated 26.06.2024. Hence this application.

2. Perusal of record reveals that vide order dated 28.06.2024, applicant was admitted to ad-interim pre-arrest bail and today the same is fixed for confirmation or otherwise.

3. At the very outset, learned counsel for the applicant points out that applicant was all along on bail granted to him by the Addl. Sessions Judge vide order dated 23.12.2020, available at page 37 of the file; however, after getting released from jail he could not appear before the trial court due to unavoidable circumstances; however, as and when he learnt that case has not been disposed of, has filed anticipatory bail application before the court of sessions, which subsequently, was assigned to VIIth Additional Sessions Judge/MCTC Karachi-Central, who after hearing the parties has turned down the request of applicant for extraordinary relief vide order dated 26.06.2024. He further submits that after furnishing surety before this court, the applicant has joined the trial proceedings where entire case has been proceeded and now it is fixed for recording statement of accused under section 342 Cr.P.C.. He, therefore, submits that once the applicant was admitted to bail and surrendered voluntarily before the Court below as well as before this Court, his conduct shows that he had no wrong intention to abscond away but to surrender, hence prays for confirmation of ad-interim pre arrest bail. To support his submissions, learned counsel has relied upon the cases of *TUFAIL AHMED V/S THE STATE (2015 P.CR.L.J. 51)*, *ABDUL RASHEED V/S THE STATE & ANOTHER (2023 SCMR 1948)*, *MUHAMMAD ASLAM V/S THE STATE & OTHERS (2016 SCMR 1520)*, *NOMAN KHALIQ V/S THE STATE & ANOTHER (2023 SCMR 2122)* and case of *IKRAM-UL-HAQ V/S RAJA NAVEED SABIR & OTHERS (2012 SCMR 1273)*.

4. Learned Deputy Prosecutor General, Sindh opposed the grant of this application on the ground that applicant by remaining fugitive has misused the concession, therefore, is not entitled for bail; however, she could not controvert the fact that applicant surrendered voluntarily by filing anticipatory bail before

the Court of Sessions as well as this court; besides, he was all along on bail granted to him by the Addl. Sessions Judge on merits.

5. The complainant inspite of service has chosen to remain absent.

6. Heard and perused the record. Admittedly the applicant was all along on bail granted to him by Addl. Sessions Judge on 23.12.2020; however, he remained fugitive for about 13 months and again surrendered before the court below by filing anticipatory bail application. Since the applicant was granted bail by the Addl. Sessions Judge on merits and later he after remaining absconder for 13 months surrendered voluntarily before the court below as well as this court, thereby has put himself completely upon the mercy of court. Such conduct on the part of applicant shows, he had no wrong intention to abscond away. After rejoining the trial, applicant has been appearing and facing it without negligence, resultantly, the trial has been concluded and at the moment, as stated at the Bar, it is at the verge of conclusion viz. recording statement of the accused in terms of Section 342 Cr.P.C. No complaint with regard to misuse of the concession extended to applicant has been brought on record by the prosecution or the complainant through which it could be deduced that applicant is not entitled for extraordinary relief.

7. It is settled principle of law that mere absconsion is no ground to intercept the bail to an accused if otherwise accused has got a good case on merits. Reliance can be placed upon the case of *MITHO PITAFI Versus THE STATE* (2009 SCMR 299). As far as, merits of the case are concerned, applicant was granted post arrest bail by the Addl. Sessions Judge on merits and later due to his little a bit absconsion it was recalled. In case, applicant may be put behind the bars, tomorrow again he will be released on bail, therefore, no technical or legal purpose will be served by putting him in jail. Reference can be had from the case of *MUHAMMAD RAMZAN Versus ZAFARULLAH and another* (1986 SCMR

1380). In instant case, applicant was all along on bail granted to him by the Addl. Sessions Judge; besides, he was not arrested or forced to surrender but he had surrendered voluntarily by putting himself completely upon mercy of the Court; hence, he deserves to be admitted to extraordinary relief. In case of *HASSAN ALI RAJA Versus The STATE and another* (2020 P.Cr.L.J 931) learned Bench of Islamabad High Court, while dealing with identical issue, has held in para-11 of said order, as under;_

“11. There should be some difference between proclaimed offender, who had remained subject of raids, exercise to trace whereabouts, search by investigating agency and finally caught, arrested due to efforts by the police or either during proceedings on the direction of the Court, and one who himself voluntarily surrenders before the Court of law, put himself to the mercy of the Court, seeks protection of the Court and present himself to seek assistance of the Court/access to justice. It amounts to denial an individual to access to justice if some benefit is not extended to the latter. In response to his volunteer act as compared to the forceful arrest by the police/agency. He has placed/put confidence upon the administration of Criminal Justice System. This Court believes that one who wants to avail protection of criminal justice system, he should not be discouraged and penalized for his good deed because finally the matter is to be dealt with by the Court of competent jurisdiction on merits.”

8. Moreover, the case has been concluded and it is at the verge of recording statement of the accused under Section 342 Cr.P.C; hence, at this juncture, any adverse order may prejudice the case of applicant.

9. It is settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Since, the applicant was granted bail on merits and later it was recalled due to his little a bit absconsion; hence, looking to his conduct, his case requires further enquiry. Reference can be had from the case of *ABDUL QADIR Versus THE STATE* (2004 P.Cr.L.J 285). In the circumstances and in view of dicta laid down by learned Bench of Islamabad High Court in case of *HASSAN ALI RAJA*

(*Supra*) as well as cases of *MITHO PITAFI (Supra)* and dicta laid down in case of *MUHAMMAD TANVEER Versus The STATE (PLD 2017 SC 733)*, the case against applicant requires further enquiry within meaning of subsection (2) to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant Qadeer Hussian Shah son of Muhammad Hussain Shah on 28.06.2024 is hereby confirmed on same terms and conditions.

10. Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

11. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence till final decision of main case. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

J U D G E

Approved for Reporting
Aamir/Zulfiqar