

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2188 of 2024

Applicant : Syed Asif Hussain S/o Syed Aas
Muhammad through Mr. Ijaz Farooq
Khan, Advocate

Complainant : Mst. Nighat Sultana W/o Muhammad
Azhar Ali Khan, present in person.

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G.,
Sindh a/w SIP Majid

Date of hearing : 04.03.2025

Date of order : 04.03.2025

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.406/2024 for the offence under Sections 447, 453, 34 PPC registered at PS Awami Colony, after his bail plea has been declined by the learned XIIIth Additional Sessions Judge, Karachi East vide order dated 03.08.2024.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Applicant is called absent without intimation. Even learned counsel for the applicant submits that he is not in contact with the applicant; however, he was directed to proceed with the matter. He has read over the FIR and stated that FIR is delayed for two days for which no plausible explanation has been furnished by the complainant; however, he submits that if applicant is convicted, it will be double jeopardy. Lastly, he prays for confirmation of bail.

4. On the other hand, Complainant present in Court states that present applicant is still occupant of the said house and he is not even attending the trial Court. Learned Addl. P.G. also opposes for confirmation of bail.

5. Heard arguments and perused the record.

6. From perusal of record, it reflects that Court of law has decided the case in favour of the complainant and in pursuance of the directions, both the houses got vacated by the Bailiff with the help of police and possession was handed over to the complainant, who put her locks; however, on 21.05.2024, when she visited her house to look after the same, she saw that the locks were broken and the present applicant Asif with some other persons illegally occupied the said house. Since the present applicant violated the Court's order by illegally occupied the said house. He is also not attending the trial Court nor appearing before this Court. No malafide or ill-will or enmity has been pleaded by the applicant/accused, which could be the ground for false implication in this case. Sufficient material is available on record to connect the present applicant in the commission of offence. At bail stage, only tentative assessment is to be made.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, the instant bail application is **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicant/accused vide order dated 26.09.2024 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran/PA