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Bail in Sedition Case

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Present:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain

Cr. Bail Application No.D- 02 of 2023

Date of hearing: 16.02.2023.  
Date of order: 16.02.2023.

M/s Sajjad Ahmed Chandio, Ishrat Ali Lohar, Meer Ahmed Mangrio, Zulfiqar Korai, Irfan Ali Khaskheli and Saad Salman Ghani, Advocates for applicant.

Mr. Shahzado Saleem Nahiyoon, Additional P.G for State alongwith Amjad A. Shaikh, SSP Hyderabad, Ghulam Nabi Khoso, DSP (Legal) Hyderabad and Niaz Hussain Panhwar, SHO A-Section, Latifabad, Hyderabad.

ORDER

**Mohammad Karim Khan Agha, J.-** The applicant Shakeel Ahmed Zai has applied for post arrest bail in respect of FIR No.9/2023 of PS A-Section Latifabad, Hyderabad u/s 123-A, 124-A, 34 PPC. The applicant had applied for post arrest bail before the learned Judge, ATC-I, Hyderabad however, vide order dated 11.01.2023, the same was declined hence he has approached this Court for the same relief.

2. The brief facts according to FIR are as under:-

*"On behalf of state complaint is that I am posted as SIP at this police station. Today on 08.01.2023 I along with staff HC/3105 Nisar Ahmed, C/2122 Imran Zaidi, C/649 Saleem Soomro, under roznamcha entry No.20 at 2000 hours in official mobile No.SPE-733, left for patrolling within limits. After patrolling from different places reached at 7/8 round about, special spy came and informed that on 05.01.2023 there was marriage ceremony of daughter of Mst. Nasreen at Everlush Marriage Hall Unit No.7 Latifabad and guest each one Nisar Panhwar, Rasheed Bhayya, Raheel, Shakeel Zai, Abdul Majeed Khan and other 4/5 unknown persons during marriage ceremony raised slogans against Pakistan state and Long live Altaf Hussain. On such*

*information at once rushed at Everlush marriage Hall and checked recording of CCTV cameras installed there and found that above persons were raising slogans; hence returned at police station and informed high-ups and high-ups ordered to take action according to law against the accused Persons. Therefore, finding the above acts of accused persons offence under sections 123-A, 124-A, 34 PPC, on behalf of state this case is registered."(bold added)*

3. We have heard the learned counsel for applicant and learned A.P.G.

4. Learned A.P.G states that he has no objection for grant of bail to the applicant in this case subject to his furnishing solvent surety.

5. Be that as it may, we feel constrained to comment on the circumstances of this case. The applicant has been booked for a very serious offence of raising slogans against the State of Pakistan u/s 123-A, 124-A, 34 PPC. The alleged incident whereby the applicant is alleged to have made anti State slogans took place outside of a marriage hall. Three days **after** the present incident whereby slogans were made, on spy information the police registered an FIR under the aforesaid Sections against the applicant and other co-accused and also as per FIR checked the recording of CCTV Camera and found that the above named persons were raising anti State slogans.

6. First we find it surprising that the FIR was delayed for three (03) days when such a serious offence took place in front of the public in the vicinity of a busy marriage ceremony. As per FIR, the CCTV Camera footage shows the persons raising such slogans. The CCTV Camera footage was seen and sent for forensic examination however, as admitted by the IO it does **not** show the present applicant in it let alone raising any slogan against Pakistan.

7. Notwithstanding this fact the applicant was arrested within 2 ½ hours of the lodging of FIR when prima facie there was no evidence against him to connect him to the commission of offence hence it appears prima facie that the applicant was unjustly deprived of his liberty.

8. That about **three weeks after** the arrest of the applicant, the Section 161 Cr.P.C statements were recorded of some people, mainly waiters at the marriage ceremony, who alleged that the applicant was present and making such slogans. In our tentative assessment we have doubts regarding some of these Section 161 Cr.P.C eyewitness statements since they were recorded after a considerable un explained delay and also at least three of them stated that the applicant was shielded from CCTV footage which seems extraordinary since the makers of the Section 161 Cr.P.C statements were waiters at the wedding and had not even seen the CCTV Camera footage. It appears that the statements prima facie have been made in order to cover up the fact that the applicant was not seen in the original CCTV footage and naturally was not heard in such footage saying anything against the State and as such the statements prima facie were made for the pretext of covering up this lapse. Notably all the Section 161 Cr.P.C statements are stereotype and are almost a copy and paste of each other.

9. No doubt the offences charged are extremely serious but Pakistan is governed by the rule of law and as conceded by SSP Hyderabad present in Court Mr. Amjad A. Shaikh that no arrest could have been made under Section 54 Cr.P.C without collection of material against the applicant which appears to be non-existent at the time of his arrest. It is a grave concern for citizens of this country as admitted by the I.O that he arrested the applicant within 2 ½ hours of the lodging of FIR **simply because he was named in the FIR** which is against the investigation procedure and practices as per police rules and Cr.P.C. At this point of time we note that a number of cases have been filed against citizens in connection with the offence of sedition or other anti State matters. These are most serious crimes and the investigation of such crimes must be taken with great care and caution whilst ensuring that sufficient evidence is available against the maker of such statements before depriving a citizen of his liberty. On the basis of alleged anti State slogans this cannot be made a pretext for arresting any citizen at will and depriving him of his liberty which will be violation of Article 9 of the Constitution and other Articles. It is for the Courts to safeguard against such illegal practices and ensure the protection of the citizens of Pakistan under the law and the Constitution from the excesses of the

executive arm of the State. The courts are in fact the last port of call for such citizens

10. Notwithstanding the no objection given by learned Additional P.G for the grant of bail based on the above discussion at this point in time we find insufficient evidence to connect the applicant to the commission of the offence for which he has been charged and find that this is a case of further inquiry. It is noted that it is not illegal in this country to support a particular political party, provided that it is not banned or proscribed, and even to hold peaceful demonstrations in respect of the same in accordance with law. The SSP Hyderabad present in person is directed to ensure that in future no arrest shall be made in any FIR in his jurisdiction **unless** sufficient material / evidence has been collected to justify the same. The SSP Hyderabad has also undertaken to take strict action in accordance with law against the delinquent officer(s) involved in the arrest of the applicant in this case against whom they had collected no tangible evidence prior to making his arrest.

11. Consequently, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the amount of Rs.100,000/- (Rupees One Lac) and P.R Bond in the like amount to the satisfaction of the learned trial Court.

12. It goes without saying that we have only made a tentative assessment of the material before us and the applicant shall be tried in accordance with law and the decision against him shall be based on merits and the evidence placed on record without being influenced by this bail order.

13. A copy of this order shall be sent to IGP Sindh for information.

14. The Criminal Bail Application stands disposed of in above terms.