Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No. 68-B of 2021

Muhammad Raziq

Versus

The State & another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.02.2021.	**Mr. Muhammad Usman Rasheed, Advocate for the petitioner.** **Rao Muhammad Sarfraz, Advocate for the respondent.** **Mr. Sadaqat Ali Jehangir, State Counsel.** **Mr. Zafar Iqbal, S.I.**

Through this petition the petitioner seeks pre-arrest bail in case F.I.R. No. 489 dated 22.08.2020, registered under Section 506(II), Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Koral, Islamabad.

2. The learned counsel for the petitioner states that FIR was registered after the delay of one day; that the allegation of sodomy has been made against the petitioner who at the alleged time of incident was accompanied by his father and four other persons; that the alleged incident took place on a main street near a bazar and it is not conceivable that such incident could take place at such a populated location without innumerable witnesses; that the medical report reflects that the alleged injury to the complainant was declared as simple; that an application for inquiry was submitted to the Assistant Superintendent of Police who found that altercation between the petitioner and the complainant did take place but the petitioner's father Tariq Mehmood was not present at the time of incident in contradiction to what has been stated in the FIR; that subsequently a video clip emerged on social media wherein four persons can be seen beating up the complaint, however, no faces are visible and video clip does not implicate the petitioner; that the petitioner and the complainant are from same village and have a history of acrimony which

is why a false FIR has been registered against the petitioner. The learned counsel relied on 2017 PLJ 265 for the argument that "false in one thing false in everything". The learned counsel states that as the accusation against the petitioner's father has already turned out to be false, the remaining account reflected in the FIR can also not be believed. He relies on Khair Muhammad v. State (2021 SCMR 130) to argue that the merit of the case on the basis of available evidence can be looked at by this Court even at bail stage.

3. Learned counsel for the complainant states that the occurrence of an incident on the stated date involving the petitioner and the complainant is not denied by the petitioner; that the complainant clearly identified the petitioner who is nominated in the FIR; that video clip of the incident has been investigated by FIA and has been found to be legitimate; that the said video clip clearly reflects armed individuals beating up the complainant while holding weapons which is consistent with the content of the complaint's account recorded in the FIR; that the petitioner has also previously threatened the complainant and with present incident he carried out his threats; that the petitioner has a history of violence and previously too an FIR had been registered against him in which the matter was compromised after the petitioner apologized to the aggrieved party.

4. Learned State Counsel also opposed the bail. He states that the petitioner is nominated in the FIR and that the medical record is of no significance as in the case of an attempt to commit sodomy there is no need to have medical examination done; that the gun which is visible in the video clip is to be recovered from the petitioner as well the phone which was used to transmit a video clip showing the incident and for such purposes the State needs to take the petitioner into custody.

5. I have heard the arguments and reviewed the file.

6. The petition for bail before arrest was rejected by the learned Additional Sessions Judge by order, dated 21.01.2021 who found that, prima facie, "the facts and circumstances of the case connects the accused/

petitioner with the commission of alleged offence" and rejected the bail.

7. The august Supreme Court has most recently held in Criminal Petition No. 149-K of 2020 (*Kamran Attaullah and another vs. The State)* that "it is by now settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information/evidence consequent upon arrest. Mala fide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means; it is not a case in hand".

8. The guidance has also been provided by the apex Court regarding how the grant of pre-arrest bail is to be approached. It was held by the august Supreme court in Criminal Petition No. 1245/2020 *(Muhammad Zahid Aslam and another vs. The State and another*) that "it goes without saying that grant of pre-arrest bail in a cognizable criminal case is an extraordinary remedy, cautiously granted to protect dignity and honour of a citizen, manifestly found being harassed or hounded through process of law actuated by motives, oblique and sinister, while taking into account the possible set back, likely to be endured by the prosecution during investigative process. It is in this narrow spectrum that the plea raised by the petitioners during investigation as well as before the Court, merits consideration."

9. In *Rana Abdul Khaliq v. The State* (2019 SCMR 1129) the august Supreme Court cancelled a pre-arrest bail granted by the High Court and held that "grant of pre-arrest bail is an extra-ordinary remedy in criminal jurisdiction... grant of pre-arrest bail essentially requires consideration of malafide, ulterior motive or abuse of process of law...".

10. In the instant case the altercation between the petitioner and the complainant is admitted together with the history of acrimony between the parties. Learned

counsel for the petitioner has been unable to make out the case for malice or malafide. Mere history of ill-will between the parties is not enough to impute malafides in the present case. The petitioner has also not made out a case for abuse of the process of law or an ulterior attempt by the complainant or the State to besmirch his reputation by arresting him. In view of the material available on record and the facts and circumstances of the case, the learned Additional Sessions Judge committed no error while refusing the bail petition.

10. In view of the principles laid down by the august Supreme Court in the absence of malafide or evidence of abuse of the process of law for ulterior purposes, the instant petition fails and consequently ad-interim bail granted to the petitioner is hereby recalled.

(BABAR SATTAR)
JUDGE

Saeed.