ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Criminal Misc. No.630-B of 2022

Ikram Hussain

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.06.2022	Petitioner on ad-interim bail with Mr. Javed Akhtar Kayani, Advocate. Mr. Arif Khan, Advocate for respondent. Mr. Jawwad Abbas, State counsel, Rafaqat Hussain ASI with record.

Through the instant Criminal Misc., petitioner-accused (*Ikram Hussain Abbasi)* prays for pre-arrest bail in FIR No. 296, dated 21.03.2022, Under Section 447, 506(ii), 379, 109, 427 & 511 PPC, registered at Police Station Bhara Kahu, Islamabad.

2- According to the allegations set-forth in the FIR, on 16.03.2022 at about 6:18 pm, at plot No. 4, measuring 4 Kanal 5 Marla situated in Doctors Enclave, Mauza Phulgran Islamabad, one Syed Ibrahim Shah, brother-in-law of the complainant, on the asking of the latter, had been erecting sing-board of ownership along with 3-4 persons duly armed emerged on silver colour Parado, bearing registration No. BD-0595; that Ikram (petitioner) who was sitting on the front seat having a weapon, asked the brother-in-law of the complainant that there is a stay order over the said plot and that if he (brother-in-law of the complainant) tried to intervene, would be done to death; that in the meanwhile, his brother-in-law called said Ikram (petitioner) through the cell phone of his father who again extended a life threats and threatened to dismantle all sign-boards; that stay order regarding the subject plot had already been vacated by the Civil Court vide order dated 23.11.2021 as no one from the assailants had any proof of ownership; that mutations in favour

of the assailants were also cancelled by the orders of the ADCR; that land of the assailants is located in Shamlat deh whereas the plot of the complainant is situated in the society and he has also a register sale deed of the said plot; that earlier ring-leader of the group namely Qasim Ikhlaq extended life threats to his father upon which FIR No. 139/2020 was registered at P.S Barakahu, Islamabad. As per allegations the assailant took away sign-boards from his plot, demolished its walls and attempted to take its possession illegally/forcibly.

3. Learned counsel for petitioner argued that the story narrated in the FIR is concocted; that there is no eye witness of the alleged occurrence; that nothing is to be recovered from the petiotner; that the offence alleged do not attract in the circumstances narrated in the FIR; that petitioner is an aged and ailing person; that the offences do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C therefore, the petiotner is entitled for the concession of pre-arrest bail.

4. On the other hand, learned State Counsel assisted by leaned counsel for the complainant repelled the above submissions. It is asserted that the petitioner is nominated in the FIR and sufficient incriminating material is available on record which *prima facie* connects him with the commission of alleged offence; that the petitioner had a commanding role; that earlier an FIR was got registered by the father of the complainant regarding alike incident and that no malice or malafide on the part of the complainant is available therefore, petition is liable to be dismissed.

5. Heard, record examined.

6. The allegations against the petitioner are of extending life threats to the brother-in-law of the complainant while duly armed, taking away sign-boards and an attempt to take forcible possession of the subject plot by demolishing its walls.

7. Record reveals that the incident has allegedly happened with one Syed Ibrahim Shah, brother-in-law of the complainant and the latter was not present at the spot at the relevant time.

8. Record further reveals that the occurrence allegedly took place on 16.03.2022 and FIR was lodged on 21.03.2022 with a delay of almost six days, which cast shadow on the commission of the offence, while the sole eyewitness Syed Ibrahim Shah got recorded supplementary statement on 23.03.2022 with a delay of seven days after the occurrence and without any explanation wherein he did not allege taking away of the sign-boards or demolishing the walls, erected at the subject plot.

9. In-addition, though it is alleged that the assailants were duly armed but despite advancing specific details in the complaint, on the basis of which FIR was registered, there is no mention of the kind of weapon, which the assailants were allegedly keeping in their possession.

10. This glaring contradiction in the contents of FIR and the supplementary statement of the complainant, makes the case one of further inquiry particularly when there is no denial that the parties are in litigation over the landed property and an FIR was also got registered by the father of the complainant.

11. It is by now well settled that if there is non-availability of incriminating material against an accused, his implication by the complainant or the persistence of the police to arrest him, would be construed as the circumstances, which by themselves indicate malafide on the part of the complainant or the police and in that eventuality, an accused need not to lead any evidence to substantiate the malice or malafide on part of the complainant or the police. Reliance is placed upon case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another"*** **(PLD 2021 Supreme Court 708).**

12. It has also been held by the Hon'ble Apex Court in the case of ***Shahzada Qaiser Arfat supra*** that:-

> *"the power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of* ***liberty, dignity, due process and fair trial****. Pre-arrest bail is in the nature of a check on the police power to arrest a person.* ***The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail****, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining* ***whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct****, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part."*
> *(Emphasis added)*

13. Furthermore, offence under section 447 & 427 PPC are bailable while offence under Section 379 and 506 (ii) PPC though non-bailable but do not fall within the ambit of prohibitory clause of section 497 Cr.P.C wherein bail is to be granted as of right.

14. Having examined the case, on tentative assessment of the material placed on record, it is concluded that petitioner has succeeded to make out a case for exercise of extra ordinary discretion of pre-arrest bail for reasons enumerated above. Consequently, instant criminal miscellaneous is allowed. Ad-interim pre-arrest bail already granted to the petitioner vide order dated 19.05.2022 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

15. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during the trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//*