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

Criminal Misc. No. 794-B of 2022

Raja Ghulam Murtaza

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.
	04.08.2022	Raja Shaukat Mehmood Satti, Advocate for petitioner. Ch. Muhammad Jahangir & Mohsin Khan Abbasi, Advocates for respondent. Mian Zain Qureshi, state Counsel with Matloob, ASI.

Through the instant Criminal Misc., petitioner (*Raja Ghulam Murtaza)* prays for pre-arrest bail in FIR No. 91, dated 22.04.2022, Under Section 379, 506(ii), 442, 511, 148 & 149 PPC, registered at Police Station Nilore, Islamabad.

2. The subject FIR stood registered on the application of respondent No. 2 namely Raja Mehboob Hussain (**complainant**) who alleged therein that he purchased land measuring 55-Kanal, bearing Khasra No. 353 situated in Mouza Jandala, Dhoke Kahli from Syed Israr Hussain Shah and in this respect an agreement was also executed; that out of the said land, the complainant got transferred 40-Kanal in his name whereas possession of the entire land was handed over to him which is in his possession for the last 12-13 years and it was also earmarked as a separate piece of land by erecting wire-pickets and in this respect a survey report was also annexed which indicates separate status of the land at the spot; that one Kamran Riaz was also deputed as a security guard on the subject land; that **today (16.03.2022**) in the morning when Ghulam Yasin driver had been doing work

with a machine and security guard was also present over there, at about 10:00 am few armed persons that includes Naseer S/o Ali Asghar along with his sons emerged and stopped the machine; that Masood s/o Sultan Muhammad along with his two sons and about 10 armed persons besides Manazir S/o Murtaza and Murtaza S/o Sher Muhammad (**petitioner**) emerged took away all articles, 10 sacks of cement, and wire pickets forcibly; that the assailants also hurled abuses and extended life threats, shutdown the machine and directed them *(complainant and others)* to leave; that the security guard went away due to fear while the assailants had been making ariel firing with their weapons and extended threats of dire consequences; that the security guard called the police through 15 due to which the assailants fled away and while leaving took along various articles.

3. Learned counsel contends that the story narrated in the FIR is concocted; that the petitioner has falsely been implicated with malafide intention and ulterior motive; that there is unexplained delay of 01 month and 06 days in lodging the FIR, which shows malafide on the part of the complainant; that the petitioner is an aged person of 75-76 years; that the complainant/respondent No. 2 is trying to convert civil litigation into criminal; that there is no eye-witness of the alleged occurrence; that no incriminating material is available on record which *prima facie* connects the petitioner with the commission of alleged offence; that the offences alleged are not attracted against the petitioner; that the petiotner is non-convict and non-record holder; that the petitioner has joined the investigation and that the offences do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C therefore, 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 by arguing that sufficient incriminating material is available on record which *prima facie* connects the petitioner with the

commission of alleged offence; that no malice or malafide on the part of the complainant is available while recoveries are yet to be effected.

5. Heard, record examined.

6. It is significant to note that there is allegation of causing reckless ariel firing with firearms but the record is silent as to whether any crime empties were recovered from the scene of the crime and this aspect of the matter if seen in conjunction with the fact that there is a delay of more than a month in lodging the FIR, brings the case within the ambit of further inquiry, particularly when there are general allegations and the fact that the parties are in civil litigation over the subject piece of land.

7. In-addition, though it is alleged that the assailants were duly armed but despite advancing specific details of the alleged stolen articles, there is no mention of the kind of weapon, which the assailants were allegedly having in their possession. The petitioner is an aged person of 75-76 years and tagged with no specific allegation.

8. Furthermore, offence under section 447 PPC is 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.

9. 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).**

10. 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)*

11. 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 21.06.2022 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.

12. 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//*