ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.796-B of 2022
Rafaqat Hussain
Versus
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16.08.2022	**Petitioner on ad-interim bail along with his counsel Mr. Imran Feroz, Advocate.** **Raja Muhammad Nadeem Kiani, Advocate for the complainant.** **Zameer-ul-Hassan, A.S.I./I.O.**

Through the instant petition, the accused/petitioner, Rafaqat Hussain S/o Muhammad Hussain, seeks pre-arrest bail in case F.I.R. No.263, dated 12.03.2022 under Section 337-A(ii) P.P.C. registered at Police Station *Ramna*, Islamabad.

2. Earlier ad-interim pre-arrest bail granted to the petitioner was re-called by the learned Additional Sessions Judge, Islamabad vide order dated 23.04.2022.

3. It is *inter alia* contended by the learned counsel for the petitioner that the allegation that the petitioner tortured his wife and snatched the earrings from her ear is absolutely false and frivolous; that the petitioner's implication in this case has been made just to harass and humiliate him; that there is a family dispute between the petitioner and his wife/the complainant; that there is an inordinate delay of six days in lodging the F.I.R. from the date of alleged occurrence with no plausible explanation; and that Section 337-A(ii) P.P.C., being punishable up to five years, does not fall within the prohibitory clause of Section 497, Cr.P.C.; and that the petitioner has already joined the investigation, and there is nothing incriminating to be recovered from his possession. Learned counsel prayed for the petition to be allowed

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and for the petitioner's ad interim pre-arrest bail granted vide this Court's order dated 21.06.2022 to be confirmed.

4. On the other hand, learned counsel for the complainant vehemently opposed the petition by stating that the petitioner is nominated in the F.I.R. with specific role of torturing the complainant and snatching the earrings from her ear; that the medical evidence corroborates the allegation with respect to torturing the complainant; that the petitioner is not a man of clean slate, rather he stood involved in a murder case bearing No.271, dated 28.09.2009, under Sections 302, 324, 148, 149 and 109 P.P.C. registered at police station *Koral*, Islamabad; and that the offence with which the petitioner has been charged is not bailable. Learned counsel prayed for the bail granting order dated 21.06.2022 to be recalled.

5. I have heard the contentions of the learned counsel for the petitioner and the complainant, and perused the record.

6. After going through the narration in the F.I.R. and the evidentiary material collected by the police, it is apparent that the petitioner and the complainant are husband and wife. The alleged occurrence took place on 05.03.2022 whereas the F.I.R. in question was lodged on 12.03.2022. There is a delay of six days in registration of the F.I.R. and no plausible explanation has been given by the complainant with respect to this delay, which indicates that the F.I.R. has been lodged with due deliberation and consultation. Reliance is placed upon the case law titled as Khair Muhammad and another Vs. The State and another (2021 SCMR 130), wherein it has been held as follow:-

> ***"....According to the contents of the crime report, it is mentioned that the occurrence has taken place in the morning whereas the matter was reported to police at 10:50 a.m. Admittedly, the inter-se distance between***

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the place of occurrence and police station is 08-KM. Inordinate delay qua time of occurrence and registration clearly reveals that possibility of deliberation and consultation cannot be ruled out..."

7. Admittedly, the marriage between the petitioner and the complainant is still intact and apparently there is a family dispute between the parties. Although the injury on the person of the complainant Lubna Shaheen has been certified by the Medical Officer as *Shjjah-i-Mudihah* which carries a sentence of imprisonment for five years, the role ascribed to the petitioner in the F.I.R. does not fall within the prohibitory clause of Section 497 Cr.P.C.

8. In the case of Muhammad Issa Vs. The State (2009 MLD 21), the Hon'ble High Court of Sindh, while granting bail to accused in an offence under Section 337-A(ii) P.P.C., held as follows:-

"...it is apparent that accused Muhammad Essa at the first instance gave hatchet blow from the right side to the head of the complainant with intention to kill him. This point is admitted by the learned counsel for the accused. The medical certificate, dated 3-8-2008 shows that injury No.1 should be treated as Shajjah-i-Madihah. Section 337-A(ii) states that Shajjah-i-Madihah carries an imprisonment for five years. The specific role assigned to the accused in the F.I.R. does not fall within the prohibitory clause of section 497, Cr.P.C."

9. As mentioned above, the alleged offence i.e., Section 337-A(ii) P.P.C. with which the petitioner has been charged does not fall within the prohibitory clause of subsection (1) of section 497 Cr.P.C. In the case of Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR 1488), the Hon'ble Supreme Court, has explained the principles for considering the grant of bail, where offences fall within non-prohibitory clause and it has been held that where offences fall within the non-prohibitory clause, the grant of bail has to be considered favourably as a rule, but may be declined in

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exceptional cases. Therefore, grant of bail in such like cases is a rule and refusal is an exception. Reference in this regard may also be made to the law laid down in the case of Tariq Bashir Vs. The State (PLD 1995 S.C. 34). The exceptions laid down in the said case are not even attracted given the facts and circumstances of the instant case. In the light of law laid down by the Hon'ble Supreme Court regarding cases where offences fall within the non-prohibitory clause of section 497 Cr.P.C., this Court is of the view that the petitioner is entitled to the pre-arrest bail.

10. The accused/petitioner is said to have joined the investigation and there is nothing incriminating which is to be recovered from him. The petitioner's guilt or innocence is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defence before the trial Court. As regards the petitioner's involvement in another criminal case, suffice it to say that it is well settled that the effect/impact of the criminal record against the accused in other cases is not relevant for disposing of the bail petition. Reference in this regard may be made on the case of Qurban Ali Vs. The State (2017 SCMR 279).

11. The epitome of above discussion is that the petitioner has succeeded in making out the case for the confirmation of the pre-arrest bail, hence, this petition is allowed and the *ad-interim* pre-arrest bail already granted to him vide order dated 21.06.2022 is confirmed on the basis of bail bonds already tendered by him. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before

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the learned trial Court unless exempted by the learned trial Court. In case, the petitioner fails to appear before the learned trial Court on any date of hearing, the bail shall stand cancelled.

12. It has been noticed that the investigating officers almost in all the cases have been showing negligence in discharge of their official duties especially with respect to arresting accused persons as and when trial Courts dismiss their pre-arrest bail petitions. In this regard, a copy of the circular dated 21.07.2022 has been produced before this Court, perusal whereof shows that the office of the Deputy Inspector General of Police (Operations) directed all the investigating officers to ensure their presence in Court rooms at the time of announcement of pre-arrest bail petitions.

13. The Presiding Officers of the trial Courts must ensure the presence of accused persons in Court rooms at the time of announcement of accused persons' pre-arrest bail petitions. Trial Courts should not announce orders for dismissal or confirmation of pre-arrest bail petitions in absence of accused persons. In the event accused are not in attendance at the time of announcement of Order, Courts ought to dismiss their pre-arrest bail petitions only on this ground.

14. Office is directed to transmit a copy of this Order to the Inspector General of Police. The Additional Registrar (Judl.) is also directed to transmit copies of this Order to the District & Session Judges East & West for strict compliance.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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