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

Criminal Misc. No.826-B of 2022

Muhammad Yasir

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.
	18.07.2022	Petitioner on ad-interim bail with Mr. Malik Saqib Mehmood, Advocate. Mr. Sajid Mehmood Ch., Advocate for respondent No.2/complainant. Mian Zain Qureshi, State counsel, M. Nawaz & M. Siddiq SI/IOs.

Through the instant Criminal Misc., petitioner-accused (*Muhammad Yasir)* prays for pre-arrest bail in FIR No. 923, dated 30.04.2022, Under Section 324/34 PPC, registered at Police Station Koral, Islamabad.

2- According to the allegations set-forth in the FIR, the daughter of the complainant namely Mst. Raheela was married to Saqlain Akhtar, co-accused, son of Mst. Naseem Saeed, sister of the complainant but their relations turned hostile and she was expelled out of the house by Saqlain Akhtar after pronouncing one divorce; that the matter was patched up but subsequently the relations again became strained; that on 24.04.2022 they visited the petitioner Muhammad Yasir on his asking for patch up where they were given beating while co-accused Saqlain Akhtar tried to kill his daughter by pressing her neck. It is further alleged that the petitioner caught hold the complainant while accused persons attempted to kill his daughter.

3. Learned counsel for petitioner argued that the story narrated in the FIR is concocted; that there is delay in lodging the FIR; that nothing is to be recovered from the petitioner; that petitioner

is non-convict and non-record holder; that the offence of section 324 PPC even by bare reading of FIR is not attracted therefore, the petiotner is entitled for the concession of pre-arrest bail. Reliance in placed upon case law reported as ***2021 SCMR 2011, 2021 PCr.LJ 1300, 2014 SCMR 1355, PLD 2021 SC 898 & 2021 SCMR 130.***

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 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. Record reveals that the occurrence of 24.04.2022 was reported to the police with the delay of five days on 30.04.2022 which, in the attending circumstances of the case, does not rule out the possibility of false implication.

7. Record further reveals that the petitioner was not assigned any blatant act except to restrain the complainant from indulging in the alleged scuffle that took place at the time of negotiations for compromise, therefore, the question of sharing of common intention with principal accused Saqlain Akhtar, who allegedly attempted to strangulate the daughter of the complainant, is a question that brings the case of the petitioner within the ambit of further inquiry particularly when nothing is to be recovered from his possession.

8. 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).**

09. 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)*

10. 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 28.06.2022 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.

11. 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//*