Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 411 of 2025

Pervaiz Khan

Vs.

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.
	07.03.2025	Mr. Tahir Habib Kiyani, Advocate for the petitioner. Mr. Muhammad Riaz Satti, Advocate for the complainant/respondent No. 2. Ms. Bilqees Rahat, State counsel with Imtiaz Ahmed, ASI, P.S. Sabzi Mandi.

MUHAMMAD ASIF, J., Through this petition, the petitioner namely (**Pervaiz Khan**) has prayed for pre-arrest bail in case FIR No. 299 dated 27.03.2024 offence under Section 406 PPC registered with police Station Sabzi Mandi, Islamabad.

2. The petitioner is absent today. The learned counsel for the petitioner argued that the petitioner is unable to attend the Court as he is not feeling well. He submits that the absence of the applicant/accused is not deliberate or willful, but it is beyond his control. He, however, requests for exemption of absence of applicant/accused and submits that the applicant has a good *prima facie* case; therefore, the pre-arrest bail application of the applicant accused be heard and decided in his absence.

3. The learned State Counsel assisted by the counsel for the complainant submits that the presence of the applicant in pre-arrest bail is very much essential. She further submits that the

Court cannot, in the absence of the applicant, travel further into the case and examine the merits of the case.

4. Argument heard, record perused.

5. Perusal of the record reveals that the FIR No. 299/2024 dated 27.03.2024 under Section 406 PPC of P.S Sabzi Mandi, was registered by the petitioner being as a complaint. Later on, he was impleaded as an accused in the same case, after recording of cross-version of respondent No.2. Whereafter, he filed the instant petition in which he was allowed ad-interim pre-arrest bail vide Order dated 26.02.2025.

6. The concept of pre-arrest bail has undergone an evolutionary process and has now acquired a clear structure of Section 498-A of the Code of Criminal Procedure (Cr.P.C.) currently governs the fundamental criteria for seeking pre-arrest bail. Now, for the sake of clarity, Section 498-A of the Criminal Procedure Code (Cr.P.C.) is reproduced below:-

> *"498-A. No bail to be granted to a person not in custody, in Court or against whom no case is registered, etc.: Nothing in section 497, or section 498 shall be deemed to require or authorize a Court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is not present in Court or against whom no case stands registered for the time being and an order for the release of a person on bail, or direction that a person be admitted to bail shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction."*

7. A perusal of section 498-A of the Code of Criminal Procedure (Cr.P.C.), it becomes evident that the accused's appearance before the Court is a prerequisite for obtaining pre-arrest bail, and without his presence, pre-arrest bail cannot be granted. In this context, the reference can be made to the case of *"Shazaib and others v. The State and others"* **(PLD 2021 SC**

886). The relevant portions of the judgment is reproduced as under:-

> *"8. It is also clarified that ad interim bail granted in a pre-arrest application on the first hearing is to simply ensure that the petitioner is present on all the subsequent dates of hearing in the pre-arrest bail matter. Petitioner's presence is, therefore, required throughout the proceedings of the pre-arrest bail petition and the fact that he appeared on the first date when ad interim bail was granted does not in any manner lessen the rigours of section 498-A, Cr.P.C. or absolve the responsibility of the accused from appearing in person before the court".*

8. It is now firmly established that when a statute prescribes a specific manner for the performance of an action, it must be adhered to strictly, without deviation. Any attempt to carry out the action in a different manner would be deemed invalid. In support of this principle, reference has been made to the case of *"Attaullah Khan v. Ali Azam Afridi and others"* **(2021 SCMR 1979).**

9. The applicant may have got a good prima facie case on merits, but it is clarified that ad-interim bail was granted to the applicant/accused on the first hearing, and he was required to ensure his presence on each and every date of hearings, but he failed to do so.

10. In view of the above, the instant petition is **dismissed** for absence of the petitioner/accused. Ad-interim pre-arrest bail granted to him by this Court, vide order dated 26.02.2025, is hereby recalled.

(MUHAMMAD ASIF)
JUDGE

//*Kamran*//

ISLAMABAD | 03.2025
APPROVED FOR REPORTING
BLUE SLIP ADDED