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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Petition No. 90/4 of 2024

“Ayub Khan etc. ... Versus ... The State etc.”

Order---04
12.09.2024

Accused/petitioners on ad-interim pre-arrest bail along with counsel are present. Complainant with counsel and DyPP for the State are in attendance.

Accused/petitioners Mubeen Khan son of Ayub Khan, Rehmanullah son of Ayub Khan and Ayub Khan son of Gul Bahar Khan seek confirmation of their pre-arrest bail provisionally granted to them by this court in case FIR no. 22 dated: 09.05.2024 under Sections 506/504/447/147/149 PPC of Mishti Mela Police Station, Orakzai.

Arguments heard and record perused.

Brief facts of the case as per report are that on 17.03.2024 at about 1700 hours, the complainant was ploughing his fields through a tractor when accused/petitioners along with co-accused named in the report came and forcibly removed the tractor from the fields, used abusive language and criminally intimidated him, hence, FIR.

Keeping in view the arguments advanced by learned counsel for parties and record available before the court, it is held that the occurrence has not been witnessed by an independent person. More so, the perusal of record reveals that accused/petitioners have neither been arrested on the spot nor anything incriminating has been recovered from their possession or on their pointation. Record also provides that no weapon or firearm has been used in the commission of offence. Similarly, the co-accused with similar role has already been released on bail by this court vide order dated 03.07.2024 and thus rule of consistency is very much attracted to the case of petitioner, who is also entitled for the same concession. There are plethora of case laws on point that while granting pre-arrest bail even the merits of the case be touched upon provided the court reaches to a conclusion that in case of dismissal of pre-arrest bail, the accused would become entitled for his release on post-arrest bail because in that situation, this would be a futile exercise to send them to prison, the wisdom is drawn from 2023

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Addl. District & Sessions Judge-II
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Contd. 04
12.09.2024

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PCrLJ 517 [Lahore (Rawalpindi Bench)]. All the sections of law are bailable in nature except section 506 PPC but contents of report suggests that complainant has allegedly charged the accused/petitioners for issuance of oral threats etc. and no threat as such of causing death/serious hurt was issued, which apparently attracts the clause (1) of section 506 PPC and makes it a case of further inquiry. The offence does not attract prohibitory clause of section 497 CrPC. At present, there is not sufficient incriminating material available on file to connect the accused/petitioners with the commission of offence. Besides, the accused/petitioners have already joined the investigation and recalling their bail just for the purpose of sending them behind the bars at the wish of complainant would serve no purpose except to bring humiliation to the accused/petitioners. Likewise, there are judgments on point that when accused/petitioner has a good case for post-arrest bail, then, mere at the wish of complainant, he cannot be sent behind the bars for few days by dismissing his application for pre-arrest bail, as a ready reference the case law reported in 2023 PCrLJ 468 [Lahore] is referred here. Similarly, there are many judgments of apex courts on point that "a mistaken relief of bail may be repaired by committing the accused after trial, if proven guilty, but no proper compensation can be offered to the accused/petitioner for his unjustified incarceration *albeit* if he is acquitted after trial.

Importantly considerations for grant of pre-arrest bail are not at all different from the considerations for grant of post arrest bail, as far as merits of the case are concerned. The only difference is that there must be additional basis of humiliations, harassment, malafide, intention to disgrace and dishonor. If a person is otherwise entitled to bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him bail. Court has to keep a balance, therefore, if a fit case for grant of bail is made out, bail before arrest can be allowed in appropriate cases. (Reliance is placed on 2012 PCrLJ 430 [Sindh]). Similarly arrest for ulterior motives such as humiliation and unjustified harassment is a valid consideration for grant of pre-arrest bail. (Reliance is placed on 1993 PCrLJ 446 and 2008 MLD 805 [Karachi]).

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12.09.2024

Resultantly, the application submitted by accused/petitioners for pre-arrest bail is hereby allowed and ad-interim bail already granted to them is confirmed on the existing bail bonds. Copy of this order be placed on judicial and police files for record.

Record be returned alongwith copy of this order and file of this Court consigned to the Record Room after its completion and compilation.



Announced

12.09.2024

(Abdul Basit)

Addl. Sessions Judge-II, Orakzai