

Present: Khalil-ur-Rehman Ramday and Sarmad Jalal Osmany, JJ

Rana MUHAMMAD ARSHAD -Petitioner

Versus

MUHAMMAD RAFIQUE and another---Respondents

Criminal Petition No.25 of 2009, decided on 26th March, 2009.

(On appeal from the order dated 19-12-2008 of the Lahore High Court, Lahore, passed in Criminal Miscellaneous No. 10599-B/08).

(a) Criminal Procedure Code (V of 1898)---

----S. 498----Bail before arrest, grant of---Framework within which and the guidelines according to which, the jurisdiction vesting in the High Courts and Courts of Session is to be exercised summarized.

In a proper case, the High Court has power under section 498, Criminal Procedure Code, to make an order that a person who is suspected of an offence for which he may be arrested by a Police Officer or a court, shall be admitted to bail. The exercise of this power should, however, be confined to cases in which not only a good *prima facie* ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm.

Following is the frame-work within which and the guidelines according to which, the jurisdiction vesting in the High Courts and the Courts of Session, is to be exercised:--

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
- (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;
- (d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive from law; and finally that,
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance, approach the court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.

(b) Criminal Procedure Code (V of 1898)---

----S. 498---Constitution of Pakistan (1973), Art.185(3)--Bail before arrest, grant of---No court would have any power to grant pre-arrest bail unless all the conditions specified for

allowing bail before arrest especially the condition regarding mala fides were proved---Where no such finding existed in the bail granting order, on the contrary while talking about the disappearance of the accused for more than two years after his nomination as an accused, the High Court found that the said accused was in no condition to escape arrest or to abscond and it was the police which had not caused his arrest for such a long period of time which observation obviously established absence of ulterior motives on the part of police---Supreme Court observed that it was on account of the admitted physical disability of co-accused that the Supreme Court exercised restraint in issuing a notice to him for recall of the bail allowed to him.

(c) Criminal Procedure Code (V of 1898)---

---S. 498---Constitution of Pakistan (1973), Art.185(3)---Double murder---Bail before arrest, cancellation of---Prosecution case could not be said to have become doubtful only because the accused had not been named in the F.I.R. and had been nominated subsequently through a supplementary statement; case was not the one where it could be said that the same had been fabricated on account of ulterior motives either on the part of police or even on the part of complainant; concessions extended to the other accused on account of his physical disability could not be made available to the accused who was a perfectly healthy person; no explanation existed on record for granting the extraordinary relief of bail before arrest and that also in a double murder case, to a person/accused who was a proclaimed offender and who had been a fugitive from law for more than two years and there was no reason available in the impugned order or even on record which could justify a direct approach to the High Court for grant of pre-arrest bail without moving the Court of Session for the purpose---Effect---Held, discretion exercised by the High Court in admitting the accused to bail before arrest through the impugned order was not sustainable---Supreme Court converted the petition for leave to appeal into appeal and allowed the same and recalled the order of High Court granting bail to the accused with direction that he may be taken into custody in accordance with law if it was so desired---Supreme Court observed that the court had felt compelled to go into the merits of the case as it was done on account of the lengthy arguments of the counsel for the parties and on account of some of the observations made by the High Court and it was further clarified that the conclusion reached by the court was only for the disposal of present bail matter and should not be taken as ultimate findings on the merits of the case.

Raja Muhammad Ibrahim Satti, Senior Advocate Supreme Court for Petitioner.

Zulfiqar Khalid Malooka, Advocate Supreme Court for Respondent No. 1.

M. Siddique Baloch, D.P.G. Punjab for the State.

Date of hearing: 26th March, 2009.