

P L D 1984 Lahore 383

Before Riaz Ahmad, J

ARIF MUTIN BHUTTA-Petitioner

Versus

THE STATE-Respondent

Criminal Miscellaneous No. 1142/B of 1984, heard on 21st May, 1984.

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

-- Ss. 497 & 498-Bail-Pre-arrest bail-Requirements for grant or refusal of bail.

In deciding the question of the grant or refusal of bail, balance has to be struck amongst three requirements, firstly, a person not found guilty is presumed to be innocent: secondly, the process to ascertain the guilt, and in case, the guilt is established, he has to be brought to book and must not be allowed to defeat such process, and thirdly, the desperate persons would not be let loose on the society so that they think that they might just as well hang for a sheep as for a lamb. As far as the pre-arrest bail is concerned, besides, to strike a balance amongst the three requirements quoted above, it is essential to establish that not only the case has been registered, with an ulterior motive but is designed to disgrace the accused involved therein. Unless in pre-arrest bail these conditions are established, a Court cannot admit an accused to pre-arrest bail.

Highhandedness is required to be curbed by the Courts sternly to save the society from chaos.

Hidayat Ullah khan v. The Crown P L D 1949 Lah. 21 ; Muhammad Safdar and others v. The State 1983 S C M R 645 ; Zia-ul-Hassan v. The State P L D 1984 S C 192 and Muhammad Iqbal v. The State P L D 1963 Lah. 279 ref.

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

Ss. 497 & 498-Penal Code (XLV of 1860), Ss. 354 & 506-Bail Accused persons' residents of same locality outraging modesty in a brutal manner of a woman who was one of their neighbours Circumstances not disclosing ulterior motive on part of complainant to involve accused persons falsely with a view to disgrace them-Grant of pre-arrest bail or confirmation of interim bail already allowed to accused refused-Order already granting bail to accused recalled Leniency on part of courts to indiscriminate grant of bails disapproved.

Sh. Khurshid Ahmad for Petitioner.

ORDER

The petitioner alongwith two others are accused of committing an offence under section 354, P. P. C. for outraging the modesty of one Mst. Nargis wife of Zahid resident of Allama Iqbal Town, Lahore. In addition thereto, the petitioner and his co-accused were also accused for having committed an offence under section 506, P. P. C.

2. Precisely, the allegation against the petitioner and his co-accused, Tajammal and Shamas, are that they had been teasing the complainant Mst. Nargis by making obscene remarks. The complainant had complained with regard to the conduct of the petitioner and the co-accused to their parents but allegedly the parents did not take any action, and thus the petitioner, and the co-accused were further encouraged to indulge into their nefarious activities. It was alleged by the complainant that on 1st of May, 1984, at about 11 a.m. when her husband had gone to his shop, and while she was standing in the door of her house, for the purchase of vegetable from a vendor, the petitioner and the co-accused 'surrounded her. The petitioner remarked as to why the complainant was not giving lift to him. The complainant reprimanded them, whereupon the petitioner and the co-accused boiled with rage, and caught hold of the complainant from her neck and torn her shirt. Shamas and Tajammal, co-accused of the petitioner, caught hold of the complainant, from arms and dragged her on the road. According to the complainant, they had remarked that the complainant considered herself to be a beauty but the same will be spoiled. With utmost difficulty, the complainant rescued herself and hit the petitioner with a stone and, thereafter, the petitioner and Tajammal co-accused left, and remarked that if she does not give lift to them, she will be killed. The neighbours, Saadat Hussain and one Karam residents of 127, Ravi Block, were also attracted to the place of occurrence, and they reprimanded the petitioner and Tajammal co-accused, and rescued the complainant.

3. The co-accused, Tajammal and Shamas, invoked the jurisdiction of the learned Additional Sessions Judge, Lahore, for the grant of pre-arrest bail, and the interim bail was allowed to them, and the confirmation thereof is pending adjudication today before the said Court.

4. This Court was pleased to admit the petitioner to interim bail, on the ground that the co-accused have been admitted to bail. In fact, they had been admitted to interim bail only, and, as narrated above, the confirmation of their bail is to be decided today by the learned Additional Sessions Judge, Lahore.

5. This is certainly not a fit case for the grant of pre-arrest bail. Unfortunately, the trend of not only teasing to the womenfolk, but to humiliate them and to outrage their modesty, is on increase in our society. I think that the attitude of the parents also is a contributory factor towards this growing tendency which has to be noted with concern. Apart from the attitude of the parents, I am of the firm view, that the leniency on the part of the Courts to indiscriminate grant of bails is also a factor for such unhealthy trend. While making these observations, I should not be understood as a moralist because as a Judge of this Court, I have to do justice between man and man, in

accordance with law, but at the same time, a Court do not act in vacuum, and cannot afford to be oblivious of the prevailing trends and circumstances in the society.

6. In deciding the question of the grant or refusal of bail, balance has to be struck amongst three requirements, firstly, a person not found guilty is presumed to be innocent; secondly, the process to ascertain the guilt, and in case, the guilt is established, he has to be brought to book and must not be allowed to defeat such process, and thirdly, the desperate persons would not be let loose on the society so that they think that they might just as well hang for a sheep as for a lamb.

7. In addition thereto, as far as the pre-arrest bail is concerned, besides, to strike a balance amongst the three requirements quoted above, it is essential to establish, that not only the case has been registered, with an ulterior motive but is designed to disgrace the accused involved therein. Unless in pre-arrest bail these conditions are established, a Court cannot admit an accused to pre-arrest bail.

8. In support of my view, I respectfully place reliance upon *Hidayat Ullah Khan v. The Crown* (P L D 1949 Lab. 21), *Muhammad Safdar and others v. The State* (1983 S C M R 645), *Zia-ul-Hassan v. The State* (P L D 1984 S C 192), and *Muhammad Iqbal v. The State* (P L D 1963 Lab. 279).

9. Applying the criteria referred to above. I am of the view that high handedness is required to be curbed by the Courts sternly to save the society from chaos. In the present case, the petitioner and the co-accused who area' also residents of the same locality, in a brutal manner had outraged the modesty of a woman, one of their neighbourer. The circumstances do not disclose ulterior motive on the part of the complainant, to involve the petitioner, and the co-accused falsely in this case with a view to disgrace them and, therefore, it is not a fit case for the grant of pre-arrest bail or the confirmation of the interim bail already allowed to the petitioner. Accordingly, I would recall the order dated 7-5-1984 and dismiss the present petition.

M. Z. M. Petition dismissed.

