

P L D 1987 Lahore 99

Before Riaz Ahmad, J

MUHAMMAD YAQUB-Petitioner

versus

MUHAMMAD RAMZAN AND ANOTHER-Respondents

Criminal Miscellaneous No. 2903/8 of 1986, decided on 16th
December, 1986.

(a) Criminal Procedure Code (V of 1898)

-- S. 497(5)-Penal Code (XLV of 1860), Ss. 452, 506, 427, 440 & 380 read with S. 148/149-Pre-arrest bail allowed by Trial Court Application for pre-arrest bail vehemently opposed before Trial Court urging that recovery was to be effected from accused - Trial Court, on question of recovery, observed "in matters of recovery the Police may use other methods, experience and skill which is required from them in such circumstances" and granted bail - Such observations of Trial Court, *held*, were most perfunctory in nature and manifested, slipshod manner in which Trial Court dealt with the issue-Pre-arrest bail granted by Trial Court was cancelled by High Court.

(b) Criminal Procedure Code (V of 1898)

--S. 497(5)-Penal Code (XLV of 1860), Ss. 452, 506, 427, 440 & 380 read with S. 148/149-Pre-arrest bail, cancellation of-Recovery Pre-arrest bail defeats object of recovery-Person seeking pre-arrest bail has to establish that case was *mala fide* and he was being involved to be disgraced-Where none of such factors existed on record to justify grant of bail, exercise of discretion by Trial Court in granting pre-arrest bail, *held*, was not based upon judicial principles - Concession of bail allowed was withdrawn by High Court.--[Recovery].

Zia-ul-Hassan v. The State P L D 1984 S C 192 and *Hidayat Ullah v. The Crown* P L D 1949 Lah. 21 ref.

Arif Iqbal Hussain Bhatti for Petitioner,

Munir Ahmad Bhatti for Respondent No. 1.

ORDER

This application has been moved under section 497(5), Cr. P. C., for the cancellation of pre-arrest bail allowed to the respondent *vide* order dated 12-10-1986 passed by Additional Sessions Judge at Lahore. Vide *F. I. R.* No. 369 dated 4-10-1986 the Police Station Naulakha registered a case against the respondent and others on the complaint of one Muhammad Yaqub Butt under the provisions of section 452/506/427/440/380 read with section 148/149, P. P. C.

2. In brief the complainant Muhammad Yaqub Butt in the *F. I. R.* stated that he is Vice-Chairman of National Co-operative Transport Society which has its office opposite to the Railway Station Lahore. It was stated by the complainant that soon after partition the land around the Railway Station Lahore was taken over by the then

Lahore Improvement Trust for the preparation of a scheme to facilitate the transport business.

Accordingly, it was alleged that in pursuance of the aforesaid scheme a plot of land bearing No. 11 measuring 2 Kanals 12 Marlas and 52 sq. ft. was given to the Co-operative Society by the L. I. T./L. D. A. The National Co-operative Transport Society established its bus stand on the said plot from where its buses used to ply on different routes. Since the shifting of all the Bus Stands to Badami Bagh, the Society maintained its office in the said plot. The Society also purchased the said land by paying its price to the L. D. A. It was alleged that the respondent who is running a tyre shop near his plot and others wanted to take over the possession of the plot in possession of the Society. On 3rd October, at 10 p. m. when the staff had gone to their house and Chowkidar Muhammad Hanif and Abdul Aziz an employee of the Society were present in the office, the respondent alongwith A. G. Chaudhary, Muhammad Bashir, Mulazam Hussain, Shams-ul-Hassan, Riaz Ahmad and Muhammad Ayub alongwith others which could be identified armed with lethal weapons arrived at the office of the Society with a tractor trolley. The respondent and others started giving beating to Muhammad Hanif Chowkidar and Abdul Aziz an employee and then trespassed into the office, broke open the Almirah, in which the complainant had kept Rs. 26,000 which was taken away by the respondent and others. It was alleged that all the furniture such as almirahs, tables, the record of the Society, fans were damaged and destroyed. Six drums full with mobile oil and 20 empty drums were also taken away by the respondent and others. It was also complained that they had also disconnected the telephone of the Society by cutting its wires.

3. Respondent Muhammad Ramzan alongwith two others moved an application seeking pre-arrest bail which was entrusted to an Additional Sessions Judge at Lahore.

4. It was argued on behalf of the petitioner that essentially the dispute relates to the title of the property of the Society and that of the respondent, both are disputing the title of each other. On behalf of the complainant it was alleged that forged and fake P. T. O. and P. T. D. had been obtained by the respondent which have been challenged and the cases are pending in various Courts. I have heard the learned counsel for the parties at length. In my view, the learned Additional Sessions Judge fell into grave error while admitting the respondent to pre-arrest bail because even if the dispute with regard to the title of the property was pending in civil Courts, yet it could not have been given a licence to the respondent to take law into his own hands and to ransack the premises of the complainant. The pre-arrest bail was vehemently opposed before the learned Additional Sessions Judge and it was urged that the recovery has to be effected from the respondent. Strangely enough, the learned Additional Sessions Judge made the following observations on the question of recovery :-

"In matters of recovery the police may use other methods, experience and skill which is required from them in such circumstances."

5. The above-quoted observations are most perfunctory in nature and manifest the slipshod manner in which the learned Additional Session Judge dealt with the issue. The learned Additional Sessions Judge also overlooked the case law on the subject of

the grant of pre-arrest bail and also on the question of recovery. In the case reported as *Zia-ul-Hassan v. The State* **PLD1984SC192**, it was held that to defeat the object of recovery the weapon of bail before arrest cannot be used.

6. As far as the grant of pre-arrest bail is concerned not once, but. repeatedly this Court as well as the Supreme Court has continuously laying down the principles governing its grant, but I am sorry to observe that these principles are being overlooked and ignored by the Courts below. In the case reported as *Hidayat Ullah v. The Crown (1)* and approved by the Supreme Court of Pakistan in *Zia-ul-Hassan v. The State*, it was incumbent upon the person seeking pre-arrest bail to establish that the case is *mala fidee*, and he is being involved to be disgraced. I have also gone through record of this case and unfortunately none of these features exist on the record so as to justify the grant of pre-arrest bail. Accordingly, I hold that the exercise of discretion by the learned Additional Sessions Judge is not, based upon the judicial principles. Accordingly, the concession of pre-arrest bail allowed to the respondent is hereby withdrawn. He shall be taken into custody forthwith.

With these observations, this petition is allowed.

M. B. A. *Petition allowed.*

. (1) P L D 1949 Lab. 21

