

2010 M L D 313

[Lahore]

Before Sardar Tariq Masood, J

FIDA HUSSAIN---Petitioner

Versus

THE STATE and others---Respondents

Criminal Miscellaneous No. 1942-B of 2009, decided on 11th November, 2009.

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

----S.498---Penal Code (XLV of 1860), Ss.447/511/379/506---Criminal trespass, theft and criminal intimidation---Pre-arrest bail, confirmation of---Co-accused had been allowed bail after arrest and during physical remand of accused persons, nothing was recovered and no useful purpose was likely to be served, if the bail of accused was not confirmed, because after arrest he could again be allowed bail on the ground that similarly placed other accused were already on bail---When bail application of co-accused having one and the same role was allowed, then it could also be given the benefit of such bail on the ground of consistency, even at the stage of bail before arrest---Ad interim pre-arrest bail already granted to accused was confirmed, in circumstances.

Muhammad Ramzan v. Zafar Ullah and another 1986 SCMR 1380 and Shafqat Hussain v. The State 2007 YLR 1159 rel.

(b) Penal Code (XLV of 1860)---

----Ss. & 506---Criminal intimidation---Threat simpliciter would not constitute criminal intimidation within the definition of S.503, P.P.C., unless it was to cause that person to do any act which he was not legally bound to do so or to omit to do any act which that person was legally bound to do.

Syed Ali Ashgar Shah v. The State 1998 PCr.LJ 270 and Gohar Javed v. State and another 2007 YLR 441 ref.

Muhammad Farooq Warind for Petitioner.

Aftab Ahmad Goraya Additional P.G. along with Naseer-ud-Din Gillani, A.S.-I.

ORDER

SARDAR TARIQ MASOOD, J.---Fida Hussain petitioner seeks bail before arrest in case F.I.R. No.408, dated 18-9-2009 registered under sections 447/511/379/506, P.P.C. at, Police Station Saddar District Rahimyar Khan.

2. Briefly the prosecution story mentioned in the F.I.R. is that the petitioner along with others trespassed into the land of the complainant, threw his bricks outside and threatened to occupy the land of the complainant and stolen away the bricks.

3. Learned counsel for the petitioner contends that offence under section 379, P.P.C. has been deleted by the police and section 506, P.P.C. is not made out and remaining sections are bailable. Further contends that all the accused are allowed bail after arrest by the learned

Magistrate vide order, dated 17-10-2009 and the case of the petitioner is at par with that of his co-accused and no useful purpose would be served by sending the petitioner behind the bars.

4. Learned Additional P.G. for the State opposed the grant of bail by arguing that although section 379, P.P.C. has been deleted but section 506, P.P.C. is made out.

5. Heard. Record perused.

6. Co-accused of the petitioner has been allowed bail after arrest and during their physical remand, nothing was recovered and no useful purpose was likely to be served if the bail of the petitioner is not confirmed because after arrest, he could again be allowed bail on the ground that similarly placed other accused were already on bail. In the cases of Muhammad Ramzan v. Zafar Ullah and another (1986 SCMR 1380) and Shafqat Hussain v. The State (2007 YLR 1159), it was observed by the Courts that when bail application of the co-accused having one and the same role was allowed then it can also be given the benefit of such bail on the ground of consistency even at the stage of bail before arrest.

So far section 506, P.P.C. is concerned, threat simpliciter did not constitute criminal intimidation within the definition of section 503, P.P.C., unless it was to cause that person to do any act which he was not legally bound to do or to omit to do any act which that person was legally bound to do. In the present case, no such situation is mentioned rather only allegation.

From this sentence, offence criminal intimidation within the definition of section 503, P.P.C. is not made out and person cannot be punished under section 506, P.P.C.

In the case of Syed Ali Asghar Shah v. The State (1998 PCr.LJ 270), bail before arrest was confirmed and the learned Judge observed:--

"I am of the view that the allegations against the petitioner and his co-accused that he:--

accepted at its face value, no case punishable under section 506, P.P.C. is made out and that threat simpliciter is not sufficient to constitute criminal intimidation within the definition of section 503, P.P.C., unless it is to cause that person to do any action which he is not legally bound to do or to omit to do any act which that person is legally bound to do, which is not in the instant case. The mere fact that although the allegation levelled in the F.I.R. did not constitute offence punishable under section 506, P.P.C. yet police registered the case, under this section; obviously to arrest him, indicates mala fide on the part of the police."

Likewise, in the case of Gohar Javed v. State and another 2007 YLR 441, F.I.R. under sections 506/148/149, P.P.C. was quashed by the learned Judge by observing:--

"There was a simple threat which could not be considered to have caused any alarm to informant because no such words depicting such consequences were found in F.I.R. Not a single word or sentence shows that any threat was hurled or informant was directed to do any unlawful act, or to omit to do an act which the informant was

entitled to do legally---third condition provided for applicability of section 506, P.P.C. is missing."

7. In view of the above circumstances, this petition is allowed and the ad interim pre-arrest bail already granted to the petitioner is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.50,000 (Rs. Fifty thousand only) with one surety in the like amount to the satisfaction of learned trial Court.

H.B.T./F-85/L Bail confirmed.