

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

INAM ULLAH---Petitioner

Versus

The STATE and others---Respondents

Crl. P. No. 39-L of 2021, decided on 13th August, 2021.

(Against the order dated 22.12.2020 passed by the Lahore High Court, in Crl. Misc. No.67963-B of 2020).

Criminal Procedure Code (V of 1898)---

---S. 498---Constitution of Pakistan, Art. 185(3)---Pre-arrest bail---Second pre-arrest bail petition filed after withdrawal of the first pre-arrest bail petition without satisfactory explanation for withdrawing the earlier petition---Maintainability---In case the accused failed to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

Filing a pre-arrest bail petition, enjoying the concession of ad interim bail granted therein and then simply withdrawing the petition in order to file another one after sometime and availing the same benefit of ad interim bail once again, in the absence of any lawful explanation or justification, was a sheer abuse of the process of the court.

Muhammad Sadiq v. State 2015 SCMR 1394 ref.

While the accused could approach the same court with a fresh pre-arrest bail petition if the earlier one had been withdrawn without advancing arguments on merits, the court must be watchful that the successive petition was not readily entertained or the concession of ad interim bail granted to the accused, unless he furnished satisfactory explanation for withdrawal of the first petition and filing of the second one; otherwise, an unscrupulous accused could abuse the process of court for ulterior purposes. Therefore, the accused must be required by the court to furnish satisfactory explanation for withdrawing the first pre-arrest bail petition at the time of entertaining the second pre-arrest bail petition. Unless there was satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the police to prolong the investigation.

While the accused had access to courts to seek pre-arrest bail, even successively for justifiable reasons, he could not be permitted to abuse the concession of ad interim bail to stall the investigation and play hide and seek with the criminal justice system. In case the accused failed to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

Mian Subah Sadiq Wattoo, Advocate Supreme Court for Petitioner along with Petitioner.

Jaffar Addl. P.G. for the State along with M. Akhtar, ASI.

Date of hearing: 13th August, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner filed a pre-arrest bail petition before the High Court in case FIR No.541 of 2020 dated 14.09.2020, registered at Police Station Yousaf Wala, District Sahiwal for offences punishable under sections 324, 148 and 149, P.P.C., which was withdrawn without arguments in merits on 03.12.2020 by the petitioner. Thereafter, the petitioner filed a second pre-arrest bail petition on 21.12.2020. The High Court dismissed the second pre-arrest bail petition vide impugned order dated 22.12.2020, with the observation that the petitioner was trying to play hide and seek with the court in order to deliberately prolong the matter and create hurdles in the way of the investigation; hence, the present petition for leave to appeal.

2. We observe, at the very outset, that filing a pre-arrest bail petition, enjoying the concession of ad interim bail granted therein and then simply withdrawing the petition in order to file another one after sometime and availing the same benefit of ad interim bail once again, in the absence of any lawful

explanation or justification, is a sheer abuse of the process of the court. This Court has already disapproved and deprecated such practice in *Muhammad Sadiq v. State*,¹ with the following observations:

Filing of pre-arrest bail petitions again and again amounts to misuse of law and it also increases the backlog of the Courts and this growing trend should have to be stopped by the learned Courts below. When the second application was withdrawn by the learned counsel for the petitioners, the petitioners could not avail the said remedy even after the deletion of section 365, P.P.C. by the investigating officer as it had attained finality but the petitioners adopted the policy of hide and seek by moving a number of applications.

While the accused can approach the same court with a fresh pre-arrest bail petition if the earlier one has been withdrawn without advancing arguments on merits, the court must be watchful that the successive petition is not readily entertained or the concession of ad interim bail granted to the accused, unless he furnishes satisfactory explanation for withdrawal of the first petition and filing of the second one; otherwise, an unscrupulous accused can abuse the process of court for ulterior purposes. Therefore, the accused must be required by the court to furnish satisfactory explanation for withdrawing the first pre-arrest bail petition at the time of entertaining the second pre-arrest bail petition. Unless there is satisfactory explanation, the second bail petition should not be entertained, because otherwise the accused would have an unchecked license to abuse the concession of ad interim pre-arrest bail by misusing the court-process, and hoodwink the Police to prolong the investigation. Therefore, while the accused has access to courts to seek pre-arrest bail, even successively for justifiable reasons, he cannot be permitted to abuse the concession of ad interim bail to stall the investigation and play hide and seek with the criminal justice system. In case the accused fails to give satisfactory explanation for his withdrawal of the earlier pre-arrest bail petition and the need for filing the fresh one, his second or successive pre-arrest bail petition shall not be maintainable.

3. In the instant case, the petitioner has not furnished any explanation as to why the earlier pre-arrest bail petition was withdrawn by him and what has prompted him to file the second one. Therefore, we find that the High Court has rightly rejected his second petition, and the impugned order does not call for any interference. Leave to appeal is, therefore, declined and this petition is dismissed.

MWA/I-10/SC Petition dismissed.

¹ 2015 SCMR 1394.