

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

AZAM SALEEM and another---Petitioners

Versus

The STATE and others---Respondents

Crl. Ps. Nos. 797-L and 799 of 2021, decided on 6th August, 2021.

(Against the consolidated order dated 25.05.2021 passed by the Lahore High Court, in Crl. Misc. No. 16835-B of 2021 and Crl. Misc. No. 10047-B of 2021).

Criminal Procedure Code (V of 1898)---

---S. 498-A---Constitution of Pakistan, Art. 185(3)---Pre-arrest bail---Maintainability---Second pre-arrest bail petition filed after dismissal of the first pre-arrest bail petition for non-appearance of the accused and lack of his satisfactory explanation for his non-appearance in the earlier pre-arrest bail petition---Such second pre-arrest bail petition was not maintainable.

Failure on the part of the accused to explain his absence in Court on the date fixed for hearing of his first pre-arrest bail petitions and his filing of second (bail) petition seeking the same relief amounted to playing hide and seek with the Court. Such conduct disentitled the accused from maintaining the second pre-arrest bail petition.

If a pre-arrest bail petition was dismissed for non-appearance of the accused under section 498-A, Cr.P.C, the second pre-arrest bail petition was maintainable only if the accused furnished satisfactory explanation for his absence in the first petition. Only if the explanation was found satisfactory could the Court proceed further and decide the second petition on merits. However, if the explanation was found to be unsatisfactory, the second petition was not maintainable and was liable to be dismissed without going into the merits of the case.

Shazaib v. State Crl. P. No. 1075-L of 2020, dated 29.07.2021 ref.

Muhammad Ijaz Janjua, Advocate Supreme Court for Petitioner (in Crl. P. No. 797-L of 2021).

Mian Ghulam Hussain, Advocate-on-Record along with Petitioner (in Crl. P. No. 799-L of 2021).

Khurram Khan, Addl. P.G. along with Abdul Ghafoor, S.I. Asghar Ali, S.I. for the State.

Ch. Abdul Razzaq Kamboh, Advocate Supreme Court for the Complainant.

Date of hearing: 6th August, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Petitioners (Azam Saleem and Shan Ali) seek leave to appeal against the consolidated order dated 25.05.2021 passed by the Lahore High Court in case FIR No.1004/2020 dated 20.11.2020 registered at Police Station Mozang, District Lahore for offences under sections 420, 468, 471, P.P.C., whereby their second pre-arrest bail petitions have been dismissed. Their first pre-arrest bail petitions were dismissed by the High Court for non-prosecution vide orders dated 09.02.2021 and 04.03.2021 respectively. The first pre-arrest bail petition of the petitioner, Azam Saleem, was dismissed, in addition to non-prosecution, for his failure to furnish bail bonds for ad-interim bail.

2. The High Court took up both the second pre-arrest bail petitions of the petitioners together and without inquiring into the reasons for non-appearance of the petitioners in their first pre-arrest bail petitions and without inquiring from one of the petitioners (Azam Saleem) why bail bonds were not furnished in the earlier petition, proceeded to decide the petitions on merits vide the impugned order dated 25.05.2021.

3. We have recently held in Shazaib v. State¹ that in case a pre-arrest bail petition is dismissed due to non-appearance of the accused in Court, under section 498-A, Cr.P.C., a fresh pre-arrest bail petition can be entertained only if it furnishes explanation for the absence of the accused before the Court on the date of the dismissal of the first pre-arrest bail petition. Once the Court is satisfied with the explanation given for the absence of the accused can it travel into the merits of the case. The relevant portion of the order passed in Shazaib case is reproduced hereunder for ready reference:-

7. It is also clarified that in case the petition is dismissed for non-appearance of the accused in a pre-arrest bail matter under section 498-A, Cr.P.C., the petitioner can file a fresh bail petition before the same Court provided that he furnishes sufficient explanation for his non-appearance in the earlier bail petition and the Court is satisfied with his said explanation. But if he fails to furnish any satisfactory explanation, his second bail petition is liable to be dismissed on account of his conduct of misusing the process of Court disentitling him to the grant of discretionary relief of pre-arrest bail. In the present case, the High Court could not have dismissed the petition on merits, in addition to dismissing the same for non-prosecution due to the personal absence of the petitioner under section 498-A, Cr.P.C.; therefore, the observations of the High Court regarding the merits of the case are not sustainable and hereby set aside. The petitioners are free to file a fresh bail petition, if so advised, before the High Court by giving explanation for their absence before the Court in their first bail petition and if the Court is satisfied with their explanation, it would decide their petition on merits.

In order to examine the explanation given for the non-appearance of the petitioners in their second pre-arrest petitions, we called for the complete record of their second bail petitions from the High Court. In the petition of Azam Saleem the explanation furnished for the non-appearance of the petitioner in his first petition on 04.03.2021 was that his real sister had passed away. Perusal of the documents attached with the petition shows that the sister of the petitioner had passed away on 17.02.2021, whereas the bail petition was dismissed for non-prosecution on 04.03.2021. Additionally, no reason or justification was stated for non-furnishing of the bail bonds by the petitioner. In the petition of Shan Ali no explanation, at all, has been furnished in the second bail petition for his non-appearance before the Court on 09.02.2021, when his first pre-arrest bail petition was dismissed for non-prosecution due to his non-appearance.

4. While there is no explanation given by the petitioner, Shan Ali, the explanation given by the petitioner, Azam Saleem, for his non-appearance is unconvincing and unsatisfactory and there is no explanation for his not furnishing the bail bonds after the grant of ad interim bail. Failure on the part of the petitioners to explain their absence in Court on the date fixed for hearing of their first pre arrest bail petitions and their filing of second petitions seeking the same relief amounts to playing hide and seek with the Court, and is a sheer abuse of the concession of ad interim bail extended to them in the first petitions. Such conduct disentitles the petitioners from maintaining the second pre-arrest bail petitions, therefore, the said petitions should have failed before the High Court on this score alone. The second pre-arrest bail petitions being not maintainable for the said reason, there was no need for the High Court to discuss the merits of the case. The petitioners have not even agitated any ground in the present petitions before us that explains their absence before the High Court in their first pre-arrest bail petitions.

5. As we are of the view that the second pre arrest bail petitions of the petitioners were not maintainable before the High Court, due to lack of satisfactory explanation furnished by them for their non-appearance in their first petitions, we are not required to discuss the merits of this case. However, as the High Court has discussed the merits of the case, we have examined the findings of the High Court in the light of the material available on record, in the interest of justice, and have noticed that there is sufficient incriminating material to establish that the petitioner, Azam Saleem, had fraudulently transferred the vehicle in question, in favour of the petitioner, Shan Ali. The statement of Saadi Ahmad, the actual owner of the vehicle, confirms that he never transferred the vehicle in favour of the petitioner, Shan Ali. Besides, the complainant, Adil Javed, had never instructed the petitioner, Azam Saleem, to get the car transferred in favour of the petitioner, Shan Ali. In the presence of the said incriminating material which is sufficient to connect the petitioners with the commission of the alleged offences, even on merits no case for grant of pre-arrest bail to them is made out and thus we see no reason to interfere with the impugned order on this score also.

6. In the end we reiterate, for the sake of clarity, that if a pre-arrest bail petition is dismissed for non-appearance of the petitioner under section 498-A, Cr.P.C., the second pre-arrest bail petition is maintainable only if the petitioner furnishes satisfactory explanation for his absence in the first petition.

Only if the explanation is found satisfactory can the Court proceed further and decide the second petition on merits. However, if the explanation is found to be unsatisfactory, the second petition is not maintainable and is liable to be dismissed without going into the merits of the case.

7. For all that what has been discussed above, we are not inclined to interfere in the impugned consolidated order of the High Court. Leave to appeal is, therefore, declined and these petitions stand dismissed.

MWA/A-35/SC Petitions dismissed.

¹ CrI.P. No. 1075-L of 2020 decided vide order dated 29.07.2021.