

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Cr.Misc.BBA No.3099-P/2021**

Almas Ullah Dad son of Allah Dad,  
 Resident of Merzai Shabaqadar,  
 District Charsadda.

Petitioner (s)

**VERSUS**

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Mr. Arbab Sheraz, Advocate..</u>
For State :-	<u>Mr. Mujahid Ali Khan, AAG.</u>
For respondent No.2.	<u>Mr. Imtiaz Khan, Advocate.</u>
Date of hearing:	<b><u>27.09.2021.</u></b>

**ORDER**

**ROOH-UL-AMIN KHAN, J:-**Petitioner Almas Ullah Dad, seeks pre-arrest bail in case FIR No.586 dated 17.07.2021, registered under sections 452/336/148/149 PPC, in Police Station SI Abdul Hameed Shaheed Shabqadar, District Charsadda. The petitioner was granted ad-interim pre-arrest bail by this court vide order dated 24.09.2021.

2. Having heard the arguments of learned counsel for the parties, it appears from record that for the relief of extra ordinary concession of pre-arrest bail, the petitioner initially approached the learned Additional Sessions Judge, Shabaqar, wherein he was granted ad-interim pre-arrest bail vide order dated 19.07.2021, however, on the date of final hearing of the application on 03.09.2021, the petitioner did not turn up, resultantly, his

application for pre-arrest bail was dismissed on merits by the learned Additional Sessions Judge Shabqadar vide order dated 03.09.2021, hence, the petitioner has filed the instant application.

3. The Hon'ble Supreme Court in a recent order/judgment dated 29.07.2021, passed in CrI. P. No.1075-L/2020, has exhaustively dealt with the procedure of deciding pre-arrest bail application in case the accused after getting ad interim pre-arrest bail, fails to appear before the court in light of the added section 498-A Cr.P.C.,. For the sake of convenience and guidance, relevant parts of the order are reproduced below:-

“After the insertion of section 498-A of the Code of Criminal Procedure, 1898 (“CrPC”) if the accused, seeking pre-arrest bail, is not present before the Court, the Court is not authorized to grant bail to such an accused and therefore, the petition is liable to be dismissed in light of the said statutory provision. For convenience, section 498-A CrPC is reproduced hereunder:-

**“498-A. No bail to be granted to a person not in custody, in court or against whom no case is registered, etc:-** Nothing in section 497 or section 498 shall be deemed to require or authorize a court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is **not present in court** or against whom no case stands registered for the time being an order for the release of a person on bail, or a direction that a person be admitted to bail, shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction.

Section 498-A CrPC creates a statutory fetter or a statutory pre-condition requiring the presence of the petitioner in person in Court for the exercise of jurisdiction by the Court for granting pre-arrest bail. In case the petitioner (accused) is not personally present in Court, the Court is not authorized to grant him bail and the petition is to be dismissed for his lack of presence in Court. However, in case some explanation is furnished for his non-appearance, the Court may, if it finds that explanation to be satisfactory, exempt his presence for

that day and adjourn the hearing of the petition for a short period. The Court cannot, in the absence of the personal appearance of the petitioner, travel further into the case and examine the merits of the case. In fact the examination of the merits of the case in absence of the accused totally defeats the intent and purpose of the aforementioned statutory provision. This is because once the Court proceeds to examine the merits of the case, then the court has to opion to either dismiss or allow the bail petition while under section 498-A CRPC the Court is not authorized to admit the accused to bail in his absence.

We are cognizant of the fact that before the addition of section 498-A in the CrPC, the view of the High Courts was that once a petition for pre-arrest bail is admitted for hearing and notice is given to State, it has to be decided on merits notwithstanding the absence of the petitioner on the date fixed for hearing the petition. However, after the addition of section 498-A in the CrPC, there are divergent views of the High Courts, on this point: one set of judgments still retain to the said view, while the other set of cases hold the view that the petition for pre-arrest bail is to be dismissed if the petitioner is not present in court on the date fixed for hearing the petition and it is not be decided on merits in his absence, unless the Court exempts his presence. **We approve the judgments of the High Courts noted above, which have considered the change in the legal position after addition of Section 498-A in the CrPC and disapprove those that still retain the earlier view as they have not taken account of the true import and meaning of section 498-A CrPC.** (emphasis supplied).

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 CrPC, 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. (Mukhtar Ahmad Vs State) 2016 SCMR 2064.

It is also clarified that ad interim bail granted in a pre-arrest application on the first hearing is to simply ensure that the petitioner is present on all the subsequent dates of hearing in the pre-arrest bail matter. Petitioner's presence is, therefore, required throughout the proceedings of the pre-arrest bail petition and the fact that he appeared on the first date when ad-interim bail was granted does not in any manner lessen the rigours of Section 498-A CrPC or absolve the responsibility of the accused from appearing in person before the Court."

4. This court has noted that tendency of non-appearance of accused, after getting ad-interim pre-arrest bail, particularly, on the date of final hearing of the application, is increasing day by day. The accused probably sensing dismissal of applications avoid appearance before the learned lower Courts or deliberately make their escape good and thereafter surrendered themselves before this court for the same relief. In the judgment (*supra*), the Hon'ble Supreme Court has discussed the procedure to be adopted by the courts in case the accused remains absent from the court in pre-arrest bail application.

5. In this particular case, in view of the judgment (*supra*) of the Hon'ble Supreme Court, I remit the instant application to the learned Additional Sessions Judge, Shabqadar for treating the same a fresh application and decide the same strictly in light of the guidelines given by the Hon'ble apex court. The petitioner shall furnish reasonable ground qua his absence on the day of decision of his earlier BBA application. Parties shall appear before the learned ASJ Shabqadar on 02.10.2021. In the

meantime, the petitioner shall remain on ad-interim pre-arrest on the existing bail bonds.

6. The worthy Additional Registrar (judicial) of this Court is directed to consign all pre-arrest bail applications pending before this court in which pre-arrest bail applications of the petitioners have been decided by the learned lower Courts in their absentia and inform the petitioners and their learned counsel to approach the learned Sessions Courts of the competent jurisdiction by filing fresh applications in light of this order. He shall also sent copy of this order to learned Sessions Judges of the Province for further circulation among the criminal courts of the District as well as a copy thereof to the Presidents of District Bar Associations and the President of the Peshawar High Court Bar Council for information and compliance.

**Announced:**

27.09.2021

M.Siraj Afridi PS

***Senior Puisne Judge***

**SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge**