

his account and also paid him cash amount of Rs.100,000/- on 13.05.2015 in presence of witnesses while the remaining amount was settled to be paid after arranging the employment visa within three months. It is further alleged that complainant also handed over his passports to the accused for visa purpose. But later on, the accused neither arranged employment visa for complainant nor returned the amount and passports and disappeared by closing his office.

3. It appears from the record that after usual investigation, case has been challaned against the accused, which is pending in the Court of Special Judge (Central-II), Karachi.

4. Bail application was moved on behalf of applicant/accused before the trial Court but the same was rejected vide order dated 09.06.2016. Therefore, the applicant/accused approached this Court.

5. Ms. Naila Tabassum, learned counsel for applicant has contended that applicant/accused is absolutely innocent and has falsely been implicated by the complainant with the help of FIA. It is contended that the applicant/accused was working in the office of M/s. Kahout International which having license of OEP and added that applicant/accused has no concerned whatever with the above crime. It is contended that the applicant/accused has only received Rs.1,20,000/- on behalf of Licensee being legal charges/fees. It is also contended that the applicant/accused was called by the FIA officials for recording his statement but instead of recording his statement or providing opportunity to explain the position, arrested him. She added that it is yet to be determined as

to who is the beneficiary and main culprit of the crime, thus, submitted that the case requires further enquiry. She further added that the entire case is based on documentary evidence which is in possession of prosecution and that investigation has been completed, thus, prayed for grant of bail to the applicant/accused.

6. Conversely, Mr. Ashfaq Rafiq Janjua Standing Counsel after going through the record contends that there is absolutely no malafide on the part of the complainant to falsely involve the applicant/accused in this case. The applicant is named in the FIR and specific role of defrauding the complainant of Rs.2,20,000/- is attributed to him therein. During the inquiry and later on during investigation as well the applicant has been found involved by the investigating officer in this case. The prosecution witnesses still stand by their statements involving the applicant in this case. Delay in such like cases is not fatal as people usually want to settle the dispute before approaching the concerned authorities.

7. After hearing the learned counsel for parties and going through the record, it has been noticed by this Court that there is a delay of one year in registration of FIR, which has not been explained by the complainant, which fact, prima facie shows that the FIR has been got recorded after due deliberations and consultation. During the investigation of this case nothing was recovered from the applicant/accused. It has been brought on record that the applicant/accused is employee of M/s. Kahout International situated at A/6, 2nd Floor, Dashtiyar Centre, Gulshan-e-Iqbal, Karachi, but no case has been registered against the said company. Nothing on record that applicant/accused has

forcibly demanded the amount involved in this case. It is stated in the FIR that accused has committed fraud with the complainant of Rs.3,40,000/- but in the application sent by the complainant to Director Emigration & Passport, FIA, Karachi dated 06.01.2016, stating therein that applicant/accused has committed fraud with complainant of Rs.2,20,000/-. The case of the applicant/accused is that he has not committed any fraud and Rs.1,20,000/- deposited in his account by complainant was towards license fees of M/s. Kahout International and he had not received any other amount. In my tentative view, transaction between the parties seemed to be in respect of dispute of money, which statedly accused had received from the complainant for sending him abroad alongwith work permit, but he failed to fulfill his commitment, therefore, it is yet to be determined at the time of trial whether applicant/accused has committed fraud with the complainant or otherwise. Till then on this ground, the case requires further inquiry. Offence under Section 22 of Emigration Ordinance, 1979 carries an alternate punishment and fine also, hence, the offence with which the applicant/accused is charged, comes out of prohibitory clause of Section 497 Cr.P.C. It is an admitted fact that applicant/accused was arrested on 16.05.2016 and since then, he is behind the bars. Case has been challaned. The applicant/accused is no more required for investigation. Nothing on record that accused has previous convicted or has been involved in similar type of cases in past. Therefore, no useful purpose would be served by keeping him behind the bars, thus, his further incarceration has not served any beneficial purpose at this stage. An accused cannot be kept in jail for an indefinite period as

a measure of advance punishment. Reliance is placed in the case of **Hamid Ali v. The State** reported in **2009 SCMR 734**.

8. For what has been discussed above, the case against the applicant/accused calls for further inquiry into his guilt covered by subsection (2) of Section 497 Cr.P.C. This bail application is, therefore, allowed and the applicant/accused is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial Court.

JUDGE

Faizan/