

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Cr.Bail.Appl.No.S- 1369 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

13.01.2020.

Mr. Muhammad Kaleemullah Memon, Advocate for applicants  
alongwith applicants.

Ms. Rameshan Oad, A.P.G. for the State.

Complainant Muhammad Ali s/o Rajib Ali present in person.

=

**ABDUL MAALIK GADDI, J:** Through this bail application, applicants seek pre-arrest bail in Crime No.149 of 2019 registered u/s 468, 471, 420, 506/2, 466 & 34 PPC at P.S Hala New.

2. It is noted that the applicants / accused have been granted bail by this Court vide order dated 13.11.2019. It is also noted that during trial learned Trial Court after hearing the parties added Section 466 and 506/2 PPC and deleted Section 468 PPC. Since the offence under Section 466 PPC is triable by Sessions Judge, therefore, the applicants have filed fresh bail application before the Trial Court for grant of bail but the same was dismissed vide order dated 29.11.2019.

3. The allegation against the applicants / accused is that they had allegedly issued a fake appointment order of Education Department in favour of complainant after receiving an amount of Rs.10,00,000/- from him which later was found false and therefore amount paid by complainant in lieu of his appointment order was forfeited by accused. It is further alleged that applicants / accused also issued threats of murder to the complainant.

4. Learned counsel for applicants submits that applicants have also been victim of same gang as brother of applicant No. 1 namely Mohsin Raza was

also given a fake appointment order for the post of Workshop Inspector; however, they have been implicated by complainant in this case only because one of the accused Muhammad Ali is working in Education Department. He further submits that offence with which applicants have been charged carries maximum punishment of 07 years hence does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. Lastly, he contends that there is delay of about 06 years and 08 months which has not been explained by prosecution. He, therefore, prays for grant of application and confirmation of interim bail granted to them earlier. In support of his contentions, learned counsel has placed on record a photocopy of order dated 30.10.2019 passed by this court in Criminal Bail Application No.S-967 of 2019 wherein same accused have already been granted pre-arrest bail by this court and submits that instant case being identical one also requires same treatment.

5. On the other hand learned, D.P.G. appearing for State alongwith complainant who is also present in court, opposes the bail application on the ground that applicants are nominated in FIR besides have cheated the complainant by giving him a fake appointment order. Besides, amount paid by complainant to them has also been usurped by accused. He, therefore, opposes bail application.

6. Heard learned counsel for applicants and A.P.G. as well complainant in person and perused the record.

7. Admittedly, the incident as is evident from FIR is said to have taken place on 01.01.2013 whereas report thereof was lodged by complainant on 09.10.2019 after about 06 years and 08 months delay and no plausible explanation has been furnished by prosecution for such an inordinate delay. The delay in criminal cases always held by Superior Courts to be fatal for prosecution case. Reference can be made from the case of Ayub Masih v. The

State (PLD 2002 SC 1048) wherein Honourable Supreme Court has held as under:-

*“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence. It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused.”*

8. The alleged fake appointment order issued in favour of complainant was not signed by applicants though the applicant Muhammad Ali has been working in Sindh Education Department as Clerk even fake order does not show any initial or countersignature of any of the applicants. The competent authority on whose behalf alleged fake order has been issued, have not been made party in this case. Per FIR, alleged fake order was issued on 01.01.2013 and on very same day and date it was made clear before the complainant that it was fake one despite such fact he remained mum for a considerable period. In instant case, punishment provided by law for the offence with which applicants have been charged is not exceeding the limits of prohibitory clause of Section 497 Cr.P.C. and even if they will be put behind bars today, again tomorrow they will be released on bail. Reliance can be placed upon the case of Muhammad Ramzan v. Zafarullah and another (1986 SCMR 1380). The dictum laid down by Honourable Supreme Court of Pakistan in case of Muhammad Ramzan (supra) has been followed in case of Khalil Ahmed Soomro and others v. The State (PLD 2017 Supreme Court 730) and in case of Muhammad Tanveer v. The State and another (PLD 2017 Supreme Court

733). The conditions described for grant of pre-arrest bail by Honourable Supreme Court of Pakistan in case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427) are satisfied, therefore, the upshot of my above discussion is that applicants have made out a good prima facie case for their admission on pre-arrest bail and their case requires further enquiry within meaning of subsection (2) of Section 497 Cr.P.C. Moreover, in identical case, they have already been granted pre-arrest bail by this court vide order dated 30.10.2019 passed in Criminal Bail Application No.S-967 of 2019. Even otherwise the added Sections 466 and 506/2 PPC also do not fall within the prohibitory clause of Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Interim pre-arrest bail already granted to the applicants on 06.12.2019 is hereby confirmed on same terms and conditions. The applicants present are directed to continue their appearance before the Trial Court without fail till final decision of the main case. The trial court is however, directed to expedite the trial and conclude the same within a period of two (02) months under intimation to this court.

9. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial. It is made clear that in case, if during trial, applicants / accused misuse the concession of bail, the trial court would be competent to take action against them and their surety and cancel their bail without making any reference to this court.

JUDGE

