

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 810 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

13.10.2021 :

Mr. Muhammad Iqbal Sohneri, advocate for the applicant / accused a/w applicant / accused Arshad Siraj Khan (CNIC No.42201-0626416-1).

Mr. Zafar Iqbal Arain, advocate for the complainant a/w complainant Mudassar Raza (CNIC No.42201-0441058-5).

Ms. Amna Ansari, Addl. P.G.

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NADEEM AKHTAR, J. – Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to bail pending trial in Crime No.291/2021 registered against him on 10.03.2021 at P.S. Gulshan-e-Iqbal Karachi East under Sections 420 PPC. Subsequently, the offence under Section 406 PPC was added against him in the charge sheet submitted before the trial Court. Vide order dated 06.05.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.50,000.00 and a P.R. bond for the same amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Mudassar Raza S/O Gulzar Ahmed, the applicant / accused entered into a sale agreement with him in respect of the immovable property described in the FIR ; in pursuance of the said agreement, an amount of Rs.1,300,000.00 was paid by him to the applicant as advance part payment ; subsequently it transpired that a dispute in relation to the said property was pending amongst the family members of the applicant due to which he was not in a position to complete the sale in favour of the complainant ; despite repeated demands by the complainant, the applicant failed to return the aforesaid amount to him ; and, the applicant had cheated him and had committed fraud with him.

3. It is contended by learned counsel for the applicant that the allegations against him are false and based on forged and fabricated documents prepared by the complainant which show malafide on his part ; there was an unexplained delay of three (03) months in lodging the FIR which fact alone is sufficient for the grant of bail ; the alleged claim of the complainant is fictitious and bogus as till date he has not initiated any proceedings against the applicant either for

specific performance or for recovery of the amount allegedly paid by him to the applicant ; the matter requires further inquiry ; the alleged offence under Section 420 PPC is bailable and does not fall within the prohibitory clause of Section 497 Cr.P.C. ; the offence under Section 406 PPC was subsequently added by the police in collusion with the complainant which shows malafide on the part of the police as well ; the applicant does not have any previous criminal record ; he has already join the trial and is appearing before the trial Court on every date of hearing ; and, there is no possibility that the applicant will tamper with the evidence or influence the witnesses of the prosecution or abscond if his bail is confirmed.

4. Learned counsel for the complainant files a statement along with copies of the sale agreement and receipt allegedly executed by the parties, and also the statements of the complainant and his witnesses recorded under Section 161 Cr.P.C. He submits that the aforesaid material is sufficient to implicate the applicant in the offence alleged in the FIR. He further submits that the delay in lodging the FIR was because of the negotiations between the parties. It is urged that the applicant is not entitled to the concession of bail in view of insertion of the offence under Section 406 PPC. Learned Addl. P.G. has adopted the submissions made by learned counsel for the complainant.

5. I have heard learned counsel for the applicant and complainant and the learned APG and have also perused the material available on record. According to the FIR, the date of incident was 09.12.2020 and the alleged crime was reported on 10.03.2021. Thus, there was an admitted delay of three (03) months in lodging the FIR. The explanation for such unusual and long delay offered on behalf of the complainant does not appear to be satisfactory. The dispute alleged in the FIR appears to be that of a civil nature and the authenticity and/or genuineness of the documents allegedly executed by the applicant is yet to be determined. In view of the above, this case requires further inquiry in my humble opinion. Moreover, the applicant has alleged malafide on the part of the complainant and police. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court.

6. Admittedly, the investigation in this case has been completed and the charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. It is

clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

7. In view of the above, the applicant / accused Arshad Siraj Khan son of Siraj Ahmed Khan has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 06.05.2021 is hereby confirmed on the same terms and conditions.

This bail application is allowed in the above terms.

J U D G E