

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 853 of 2021

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

04.11.2021 :

Mr. Muhammad Anwar Shahid, advocate for the applicant / accused.

Mr. Nazim Baig, advocate for the complainant.

Mr. Hussain Bakhsh Baloch, 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.369/2020 registered against him on 15.05.2020 at P.S. Docks Karachi South under Sections 420, 419, 468, 471, 506, 109 and 34 PPC. Vide order dated 20.05.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.100,000.00 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 Taha Mushtaq S/O Mushtaq Hussain, while he was in jail in a customs case, he met with one prisoner Mujtaba Husain and they become friends ; the complainant disclosed to the said Mujtaba Hussain that his mobile phones were in the custody of the customs authorities ; the said Mujtaba Hussain assured him that he will arrange the release mobile phones as his close friend Muhammad Raffay (the present applicant) is an officer in the Customs Department ; the complainant and the said Mujtaba Hussain were released on bail ; thereafter, on the pretext of releasing the mobile phones of the complainant from the customs authorities, the applicant / accused prepared some documents and bank challan and received an amount of Rs.783,000.00 from the complainant ; subsequently it transpired that all the documents prepared by the applicant were fake and forged ; 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. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant by the learned XIIth Additional Sessions Judge Karachi West vide order dated 13.03.2021 passed in Bail Before Arrest Application No.1181/2021. However, vide order dated 18.05.2021 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge.

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 himself which show malafide on his part ; there was an unexplained delay of two (02) months in lodging the FIR which fact alone is sufficient for the grant of bail ; the complainant had borrowed an amount of Rs.700,000.00 on interest from the applicant / accused, and an Iqarnama dated 27.02.2020 in this behalf was executed by the parties in the presence of witnesses ; when the applicant demanded his said amount from the complainant, he lodged the subject FIR ; the alleged claim of the complainant is fictitious and bogus as till date he has not initiated any proceedings against the applicant for recovery of the amount allegedly paid by him to the applicant ; on the contrary, the applicant has filed a Suit against the complainant for recovery of the aforesaid amount, which is subjudice ; the matter requires further inquiry ; except for the offence under Section 468 PPC, all offences alleged against the applicant are bailable and do not fall within the prohibitory Clause of Section 497 Cr.P.C. ; the offence under Section 468 PPC was added by the police in collusion with the complainant which shows malafide on the part of the police as well ; the applicant has already joined 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. On the contrary, it is contended by learned counsel for the complainant that the applicant is a habitual offender as other FIRs under similar offences have been registered against him ; the material against the applicant is sufficient to implicate him in the offences alleged in the FIR ; the delay in lodging the FIR was due to the negotiations between the parties ; and, the applicant is not entitled to the concession of bail. 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 Addl. P.G. and have also perused the material available on record. According to the FIR, the dates of the alleged incident were 14.03.2020 and 18.03.2020, whereas the alleged crime was reported on 15.05.2021. Thus, there was an admitted delay of two (02) 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. Prima facie, it appears that the parties were engaged in a transaction relating to money. The authenticity and/or genuineness of the documents allegedly prepared by the applicant is yet to be determined. In view of the above, this case requires further inquiry in my humble opinion. The applicant has alleged malafide on the part of the

complainant and police. Moreover, the offences alleged against the applicant do not fall within the prohibitory Clause of Section 497 Cr.P.C. Accordingly, the principle that the grant of bail in such offences is a rule and refusal an exception, authoritatively and consistently enunciated by the Hon'ble Supreme Court, is attracted in the instant case.

6. 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. It is a matter of record that the investigation in this case has been completed, the charge sheet has been submitted before the trial Court, and all witnesses, except for the investigating officer of the case, have been examined. 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 Abdul Raffay has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 20.05.2021 is hereby confirmed on the same terms and conditions.

This bail application is allowed in the above terms.

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