

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 2046 of 2021

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

**13.12.2021 :**

Mr. M. Atique-ur-Rehman Khan, advocate for the applicant / accused  
a/w the applicant / accused Muhammad Haris Khan.

Mr. Riasat Ali, advocate for the complainant  
a/w the complainant Abid Hussain.

Ms. Amna Ansari, Addl. P.G. a/w I.O. SIP Muhammad Waseem.

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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.269/2021 registered against him on 16.09.2021 at P.S. Jackson Kemari Karachi under Sections 420, 468, 471 and 406 PPC. Vide order dated 01.11.2021, ad-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 Abid Hussain, he was carrying on business in the name and style of 'All Pak Logistic Transport Company' at the relevant time and at the address mentioned in the FIR ; the applicant / accused was employed by him as a *Munshi* for the office work during the period 25.03.2019 to 28.06.2021 ; during his said employment, the applicant misappropriated an amount of Rs.3,000,000.00 by forging his signatures on his cheque books ; on 28.06.2021, the applicant left the office without any notice or intimation ; the fact of the aforesaid misappropriation came to his knowledge when the record of the office was checked after the disappearance of the applicant ; in view of the above, he filed Petition No.2698/2021 under Sections 22-A and 22-B Cr.P.C. before the Sessions Judge concerned ; and, in pursuance of the order passed in the aforesaid petition, his statement was recorded and the subject FIR was registered. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant by the learned XII<sup>th</sup> Additional Sessions Judge Karachi West vide order dated 06.10.2021 passed in Bail Before Arrest Application No.5042/2021. However, vide order dated 21.10.2021 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 the applicant are false and fabricated ; he has been implicated falsely due to enmity as a result of FIR No.185/2021 lodged by his brother against the complainant on 04.08.2021, wherein the complainant was arrested and had remained in jail for about one month ; there was an unexplained delay of more than five (05) months in lodging the FIR which fact alone is sufficient for the grant of bail ; the allegation of forgery and misappropriation made by the complainant is false and malafide as till date he has not initiated any proceedings against the applicant for recovery of the amount allegedly misappropriated by the applicant ; the matter requires further inquiry ; the entire purported evidence in this case is documentary which is not in possession of the applicant, therefore, 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 ; and, the applicant has already joined the trial and is appearing before the trial Court on every date of hearing.

4. On the contrary, it is contended by learned counsel for the complainant that the delay in lodging the FIR was due to the fact that the offence committed by the applicant came to the knowledge of the complainant after the applicant stopped coming to the office and eventually disappeared ; the material against the applicant is sufficient to implicate him in the offences alleged in the FIR ; there is a strong likelihood that the applicant will interfere in the investigation and will influence the witnesses if he is enlarged on bail ; 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 date of the alleged incident was 25.03.2021, whereas the alleged crime was reported on 16.09.2021. Thus, there was an admitted delay of about five and a half months in lodging the FIR. Prima facie, the explanation for such an unusual and long delay offered on behalf of the complainant does not appear to be satisfactory as the amounts allegedly misappropriated by the applicant from the bank account of the complainant must have come to his knowledge as soon as the same were debited from his bank account. The authenticity and/or genuineness of the cheques / documents pertaining to the alleged misappropriation 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. 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. All the documents pertaining to the alleged misappropriation would either be with the complainant or with his bank. Therefore, there is no question or probability that the evidence will be tampered with by the applicant 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 Muhammad Haris Khan has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 01.11.2021 is hereby confirmed on the same terms and conditions.

This bail application is allowed in the above terms.

J U D G E