

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1731 of 2021

Muhammad Awais,
applicant through:

Syed Hafeezuddin, advocate

The State,
through:

Mr. Faheem Hussain Panwhar, DPG

Nadeem Ahmed,
complainant through:

Mr. Nasir Rizwan Khan, advocate

Date of hearing:

29.12.2021

Date of order:

07.1.2022

ORDER

Adnan-ul-Karim Memon, J. – Applicant Muhammad Awais son of Salahuddin has earlier been admitted to ad-interim pre-arrest bail by this Court vide order dated 13.9.2021. Applicant has been booked in F.I.R No.97/2020, PS Malir City, Karachi registered under Sections 420/468/471/34 PPC.

2. The accusation against the applicant is that, he in connivance with his accomplice prepared forged document i.e. power of attorney of a dissolved Forvil Cosmetic firm; and, submitted a false statement in the Court of 1st Additional District & Sessions Judge Malir Karachi in Appeal No.7 of 2018. It is averred by the complainant that the said document had also been filed before the learned Peshawar High Court. It is further averred that on verification from the concerned quarters that the said firm had already been closed in the year 2013. Such report was made to the police Station, Malir City, Karachi on 01.3.2020. The applicant being aggrieved by and dissatisfied with the inclusion of his name in the F.I.R, approached the learned trial Court, which dismissed his bail plea vide order dated 06.8.2021 with the findings that the applicant misused the concession of bail already granted to him vide order dated 01.7.2021; as he remained away from the proceedings for six months; his earlier bail application was also rejected vide order dated 30.12.2020. Now the applicant has approached this Court *inter-alia* on the ground that co-accused Asif Majeed has already been granted pre-arrest bail by the learned trial Court and the same was confirmed vide order dated 13.7.2020. Looking at the above perspective, this Court vide order dated 13.9.2021, admitted the applicant to ad-interim pre-arrest bail. Today the matter is fixed for confirmation or otherwise.

3. Syed Hafeezuddin, learned counsel for the applicant has contended that the applicant is quite innocent and the alleged story of the complainant as put forward by him is false, fabricated; that there is inordinate delay of around two years in lodging FIR, therefore, the applicant is entitled to concession of pre-arrest bail; that the main accused has already been granted bail by the learned trial Court vide order dated 13.7.2020; that the alleged offense under Section 420 and 471 PPC are

bailable, whereas Section 468 PPC is non-cognizable offense, moreover the applicability of above offenses would be determined after recording evidence of PWs at the stage of the trial. It is further contended that the dispute is related to the claim of Trade Mark, the dispute between the applicant and the complainant is of purely civil nature, but the complainant with mala fide intention has falsely implicated the applicant in the present case; besides the case of the complainant is based on documentary evidence and factual controversies, which could only be resolved by recording evidence. Per learned counsel, the ad-interim pre-arrest bail earlier granted to the applicant may be confirmed on the same terms and conditions.

4. Learned counsel for the complainant as well as learned DPG vehemently opposed the grant of bail to the applicant and have prayed for dismissal of the instant bail application.

5. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record.

6. A tentative assessment of record reflects that the alleged offense took place on 11.5.2018; and the same was reported on 01.3.2020; after almost two years; that the entire case of the prosecution is resting upon the general power of attorney, allegedly filed by the applicant in the competent Court of law; that it has been alleged that a forged document i.e. general power of attorney of a dissolved firm has been used in judicial proceedings before the competent Court of law, therefore, it is yet to be determined by the learned trial Court whether, the criminal prosecution in such a circumstances, as required under Section 195 Cr.P.C., could be initiated at the complaint of the said Court and not by the private person. Primarily, the alleged false general power of attorney of a dissolved firm has not been declared to be forged document by the competent Court of law; nor the complainant had applied to the said Court for taking cognizance of the offenses alleged. It is well settled that if any forged document is placed on record by the party in the judicial proceedings; it is for the said Court to take cognizance of such offense, referred to in Section 195 Cr.P.C. as required under Section 476 Cr.P.C., however the learned trial being aware of the legal aspect of the case has already granted bail to co-accused on the same facts and circumstances of the case, thus the rule of consistency is fully applicable in the present case. Primarily, the entire case as put forward by the parties, depends upon the documentary evidence, which is available with the prosecution; and it is yet to be determined by the learned trial Court, whether Sections 420, 468, 471 PPC are attracted in the present crime or otherwise, which could only be done, after recording of the evidence; besides that there is a delay of almost two years in lodging the FIR, which is sufficient ground to confirm the pre-arrest bail, earlier granted to the applicant vide order dated 13.9.2021.

7. In view of the above, the case against the applicant requires further inquiry as provided under Section 497(2) Cr.P.C.

8. For the reasons recorded above, this application is allowed. The interim pre-arrest bail earlier granted to the applicant vide order dated 13.9.2021 is hereby confirmed in the same terms and conditions.

9. The observation recorded above is tentative, which shall not prejudice the case of either party at the trial stage.

JUDGE

Zahid/*