

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 57 of 2022**

Applicant : Anwar Haleem Khan s/o Abdul Haleem Khan,  
through Mr. Asif Rasheed, advocate

Respondent : The State, through Mr. Khadim Hussain,  
Additional Prosecutor General.

Complainant : Muhammad Latif, through Mr. Zahid Hussain  
Rajpar, advocate

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Date of hearing : 16.03.2022  
Date of order : 16.03.2022  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant Cr. Bail Application applicant/accused Anwar Haleem Khan s/o Abdul Haleem Khan seeks pre-arrest bail in Crime No. 548 of 2021, registered under Section 406, P.P.C. at P.S. Gizri, Karachi. His earlier bail application for the same relief bearing No. 4626 of 2021 was heard and dismissed by the learned Additional Sessions Judge-III, Karachi-South vide order, dated 12.01.2022. He was admitted to interim pre-arrest bail by this Court vide order, dated 13.01.2022, now the matter is fixed for confirmation of interim bail or otherwise.

2. It is alleged that, on 26.08.2021, the applicant being a partner in business with the complainant under a Partnership Deed, dated 29.10.2013, dishonestly misappropriated an amount of Rs. 93,00,000/= under Cheque Nos. 114214847 and 42814848, by transferring the said amount in his personal Bank Account instead of depositing the same in the joint partnership account, for that the applicant was booked in the aforesaid F.I.R

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motive in order to harass and humiliate him due to partnership dispute; that the complainant failed to submit any books of accounts of the partnership business to the applicant and on his demand he filed civil and criminal proceedings

against him; that there is no element of entrustment and no ingredient of the offence is available to attract the provision of 406, P.P.C.; even otherwise the alleged offence being carrying maximum punishment of seven years' imprisonment does not fall under the prohibitory clause of Section 497 Cr.P.C.; that the complainant has already filed a Civil Suit bearing No. 1162/2021 against the applicant before learned VIII<sup>th</sup> Senior Civil Judge, Karachi-South on the same issue/dispute which is subjudice before the said Court; that the guilt of the applicant requires further enquiry as envisaged under section 497(2), Cr.P.C.; entitling him for the concession of bail.

4. On the other hand, learned counsel for complainant as well as learned Additional Prosecutor General oppose this application on the ground that the applicant after receiving payment from FWO, deposited the same in his own account instead of depositing the same in joint account maintained by him and complainant in violation of articles 5 and 6 of the Partnership Deed, and thereby he committed criminal breach of trust.

5. Heard learned counsel for the parties and perused the material available on record with their assistance.

6. It appears that in the year 2013, the complainant entered into Partnership Deed with applicant, who is C.E.O. of *M/s. Trec Co. Pvt. Ltd.*, for executing a FWO contract of construction work with respect to Sewerage Network D, South Pumping Station Phase-8, DHA Karachi and they opened a joint account in Askari Bank, Phase-II, Extension, DHA, Karachi Branch and Summit Bank Phase-IV DHA, Karachi Branch wherein the payments so received from the FWO against the execution of work were deposited. It further appears that in the year 2019, the applicant sold out his firm to one Zahidullah, who opened a new account of the said firm in Khyber Bank, Bannu Branch, KPK. On 26.08.2021, the last payment of the contract work amounting to Rs.1,23,21,288/= was issued by the FWO, which was credited in the said new account; thereafter, the applicant got aforementioned two

cheques amounting to total Rs. 93,00,000/= issued in his name and got deposited in his personal Bank Account No. 228646709 at UBL Khayaban-e-Shahbaz Branch, instead of depositing the same in the joint partnership account.

7. Articles 5 and 6 of the Partnership Deed, referred by the learned counsel for the complainant, respectively, provide (i) opening of a bank account in the name of company and maintaining of the same, including signing of the cheques by both the partners and (ii) depositing of the cheques/payments pertaining to the project in joint account of the company and filing of the case in court of law in case of violation thereof by any partner. Hence, prima facie, the alleged act of applicant i.e. *getting the cheques issued on his name and depositing the same in his personal Bank Account instead of joint partnership account* is a case of breach of contract for which the complainant has already availed civil remedy by filing Suit No. 1162 of 2021 for declaration, permanent injunction, specific performance and damages against the applicant.

8. It may be observed that the applicant is admittedly a partner with the complainant and the alleged cheques/property in respect of payment of the work under partnership project were belonging to both of them as partners. As such, prima facie, both the partners are interested in the cheques/property and there cannot be an entrustment of “a partner’s property” and its “dishonestly misappropriation by the other partner”, to bring the case within the ambit of section 406, P.P.C., particularly, when the share of the complainant is yet to be determined.

9. The alleged offence under section 406, P.P.C. being punishable with imprisonment for seven years does not fall within the prohibitory clause of section 497, Cr. P.C. The record reveals that after investigation, the I.O submitted Final Report under section 173, Cr.P.C. for disposal of the case under “A” Class of Police Rules; however, the learned Judicial Magistrate concerned while disagreeing with the alleged report referred the matter to SSP South with direction to assign

investigation of the crime to any other officer. Hence, the guilt of the applicant is yet to be probed, which fact alone makes the applicant entitled to the bail.

**10.** For the foregoing facts and reasons, the interim bail granted to the applicant vide order, dated 13.01.2022 is confirmed on the same terms and conditions.

**11.** Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

JUDGE

*Athar Zai*