

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1710 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

04-11-2022

M/s. Fayyaz Ali Metlo, Athar Hussain and Ayub Channa, Advocates holds brief for Mr. Sarfraz Ali Metlo, Advocate a/w applicant.
Mr. Wazeer Hussain Khoso, Advocate for complainant.
Ms. Robina Qadir, DPG.

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Omar Sial, J: Ashok Kumar has sought pre-arrest bail in crime number 267 of 2022 registered under section 420, 406 and 34 P.P.C at the Clifton police station. Earlier, his application seeking bail was dismissed on 31.08.2022 by the learned 11th Additional Sessions Judge, Karachi South on 31.08.2022.

2. A brief background to the case is that the aforementioned F.I.R. was registered on 04.07.2022 reporting an offence, which the complainant Bhagwan Das alleged started in the year 2015 and continues to date. The complainant recorded that about 7 or 8 years ago he had booked an apartment in a project being built by the applicant and one other named Naveed Nayyar Hussain. The sale consideration was Rs. 3 crores 25 lacs whereas an amount of Rs. 1 crore and 56 lacs was paid by the complainant over an unidentified period of time. The project is not yet complete according to Bhagwan Das and the applicant does not give him a satisfactory reply.

3. Learned counsel for the complainant has passionately argued that the applicant had several projects and that people who had made bookings in these projects are all complaining that they have yet not been given possession. It was the learned counsel's desire that this Court should direct the F.I.A. or the NAB to conduct an inquiry into the projects which are being constructed by the applicant. Learned DPG has adopted the arguments of the learned counsel.

4. I have heard the counsel and the learned DPG.

5. The case between the complainant and the applicant is dependent upon the terms and conditions of the contract entered into between the parties. An

extensive review of the terms and conditions to determine where the fault lies can only be determined after the contracts are analyzed. This exercise will tantamount to a deeper appreciation of evidence, which cannot be taken by this court while hearing a bail application. A delay in the completion of a building project can happen due to many reasons. A delay does not ipso facto mean criminal intent of the builder. On his part the applicant does not deny that a booking was made and that some amount was also paid by the complainant but that subsequently the complainant stopped making payments and hence the booking was cancelled. He too relies on the contract entered into between the parties. The applicant has also filed Suit No. 1226 of 2022 in this court against the complainant and 2 others which is pending adjudication. In the background of the relationship which the parties have had and then the 7 year period after which the F.I.R. has been lodged are factors which cannot completely eliminate malafide of the complainant at this preliminary stage.

6. Section 406 P.P.C provides the punishment for the offence of criminal breach of trust, which term is defined in section 405 P.P.C. It is defined as follows:

***405. Criminal breach of trust.** Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".*

7. No record has been shown to me that would upon a tentative assessment establish that the applicant has dishonestly violated the terms of the contract which he had entered into with the complainant. As mentioned in the preceding paragraph, it is only deeper appreciation of the evidence that can decide such a question. An adjudication on the civil side on the contractual terms is already underway between the parties.

8. An offence under section 420 P.P.C. is a bailable offence whereas one under section 406 P.P.C. carries a potential sentence of 7 years, and although not bailable falls within the non-prohibitory clause of section 497 Cr.P.C. Keeping in

mind the principles enunciated in the Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I do not see any exceptional or extraordinary circumstances to decline bail to the applicant.

9. As regards the learned counsel's request that the matter be referred to NAB or the F.I.A., I am of the view that no grave reason has been put forward by counsel which would convince me to do so. Of course there is nothing stopping an aggrieved person from seeking his or her remedy from any forum which law entitles them to. The complainant may seek legal advice in this regard if he so desires.

10. Above are the reasons for my having confirmed the interim pre-arrest bail of the applicant on the same terms and conditions through a short order dated 01.11.2022.

JUDGE