

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Cr. Bail Application No. 662 of 2021

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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For hearing of bail application.

**22<sup>nd</sup> December, 2021**

Mr. Asif Ali Pirzada, Advocate for applicant.  
Mr. Abrar Ali Khichi, Addl.P.G.  
Mr. Aman Aftab, Advocate for complainant.

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Omar Sial, J: Syed Faiz Bukhari has sought pre-arrest bail in crime No. 316 of 2019 registered u/s 406, 408, 420 and 489-F P.P.C. at the Bahadurabad Police Station. Earlier, his application seeking bail was dismissed on 17-4-2021 by the learned 11<sup>th</sup> Additional Sessions Judge, Karachi East.

2. A background to the case is that the aforementioned F.I.R. was registered on 7-11-2019 on the complaint of Siraj Muhammad Iqbal. Siraj recorded that he is one of the partners in a catering firm called United Catering Service (UCS). In 2019 UCS had appointed the applicant as their booking manager. The applicant would take money from different clients for the services rendered by UCS, however, would pass on to the firm a lesser amount than what he had received and thus over a passage of time Rs. 2.5 crores had been embezzled. Subsequently, the applicant had given the catering company various cheques for Rs. 15 million, which bounced upon presentation.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned Additional Prosecutor General. My findings and observations are as follows:

4. Learned counsel for the applicant has argued that the applicant was never an employee of UCS but that he had his own business and worked for a commission; that the actual dispute between the parties is on the percentage of the commission which was to be paid to the applicant for business that he would procure for USC; that all deductions from the amounts were made by the applicant on account of such commission; that there is a delay in the lodging of the F.I.R. of 2 years; that the offences for which the applicant is charged fall

within the non-prohibitory clause of section 497 Cr.P.C.; that the complainant had attempted to exercise force on the applicant for which reason the applicant well before this case had moved an application u/s 22-A and B Cr.P.C.; and finally that the applicant had regularly been attending the trial court since the inception of the case.

5. Learned counsel for the complainant has rebutted the claim of commission and stated that the applicant was employed as a booking manager at UCS. He justified the delay in the lodging of the FIR on the ground that first it took some time for the fraud to be unearthed and then the applicant agreed to piecemeal pay back the company through cheques which also subsequently bounced when presented at the bank's counter. The learned Additional Prosecutor General has supported the arguments of the complainant.

6. The exact status of the applicant i.e. an employee of UCS or an independent contractor is not at all clear at the moment. Both sides have nothing to show in support of their respective arguments. Though it has been admitted by the learned counsel for the applicant that the applicant worked from inside the office of USC. It has been admitted by the learned counsel for the complainant that there is no evidence on record currently which could at least prima facie establish the quantum of monies received from those clients of USC who USC claims gave more money than what the applicant handed over to USC (though during the hearing of this application, the learned counsel for the complainant did put on record computerised ledger print outs detailing embezzled amounts). Similarly, learned Additional Prosecutor General as well as the learned counsel for the complainant admit that the statements of those customers who had paid the applicant (which amounts according to the complainant were in excess of what USC finally received) were not recorded.

7. I find it surprising that USC, which claims to have been in business for a number of years, could not discover for over two years that Rs. 2.5 crores had been embezzled. It would be reasonable to presume at this stage that in a catering business money would have been received on a transaction basis. It appears that the owners of USC have been grossly negligent if their claim is correct. Rs. 2.5 crores in services fee is not a small amount for an established catering business to not miss. However, the learned counsel for the complainant has justified the delay on the ground that the Rs. 2.5 crores was not siphoned off in one go but that it was taken piecemeal over a passage of two years.

8. As far as the applicant is concerned, it is prima facie reflected by the record that on 11-10-2019 (prior to the current F.I.R. lodged on 7-11-2019) he moved an application under sections 22-A and B Cr.P.C. before the learned Ex-Officio Justice of Peace complaining therein that the complainant party had used strong arm tactics against him and his brother. He stated in his application that in May 2019, the complainant party had forcibly entered his office and home and taken with them the following: (i) one Toyota Pirus, (ii) one Suzuki Alto, (iii) one Honda Civic, (iv) the original registration books of all these vehicles (v) original cheque books of his bank accounts (vi) ATM cards (vii) original passport (viii) his original CNIC as well as those of his wife and two daughters (ix) gold ornaments (x) 26 cheques in various amounts as well as six cheques of his wife's account (which the applicant and his wife were forced to sign) (xi) stage flowers equipment (xii) a Rs. 8 million sound system. Upon a tentative assessment, and in the absence of any evidence to the contrary, I do not believe the claim made by the applicant. The disbelief is further magnified when the learned counsel for the applicant confirmed that after dismissal of the section 22-A & B Cr.P.C. application, no further attempt was made by the applicant to initiate criminal proceedings against the complainant or to challenge the dismissal order before the competent court of law. Quite unnatural when one takes a look at the type of items which the applicant says were taken away from him. Doubts are further enhanced when the record reflects that although so many valuables of the applicant were stolen from him in May 2019, it was not up till November 2019 that he approached the relevant authorities seeking a remedy for his grievance. Upon a tentative assessment it appears that the filing of the application by the applicant was an extremely exaggerated pre-emptory strike perhaps knowing fully well that criminal action against him was imminent. For this reason, I am not inclined, at this preliminary stage, to accept the argument that the bounced cheques had been forcibly obtained from him.

9. The applicant has remained an absconder for a substantial time and prima facie it appears that it was after his CNIC had been blocked by the learned trial court that he surrendered and sought pre-arrest bail. No cogent reason has been provided as to why the applicant remained an absconder for what appears to be seven months. While absconsion alone may not be enough to deny the applicant bail, in this case I find that prima facie on merits too the applicant does have a

strong case to answer. His conduct therefore disentitles him from the concession, at least at this pre-arrest stage.

10. In light of the record available on record as well as the past conduct of the applicant, I am not convinced of the presence of malafide (either by the complainant or the police) in this case. Of course, it has been repeatedly held that malafide must be present, except in exceptional cases, for the grant of pre-arrest bail. On this count too, the applicant's prayer for admission to pre-arrest bail must be dismissed.

11. The bail application stands dismissed.

JUDGE