

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1906 of 2022

Applicant : Osama S/o Muhammad Anees
through Mr. Zeeshan Hyder, Advocate

Complainant : Muhammad Amir S/o Muhammad Ilyas
through Mr. Muhammad Ishaq, Advocate

Respondent : The State
through Ms. Lubna Qadir, Addl.
Prosecutor General, Sindh

Date of hearing : 09.01.2023

Date of order : 09.01.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in FIR No.1640/2021 registered under Sections 420/408 PPC at PS Preedy, Karachi, after his bail plea has been declined by Addl. Sessions Judge-IX, Karachi South vide order dated 29.03.2021.

2. The details and particulars of the FIR are already available in bail application and the FIR, as such, need not to reproduce the same hereunder.

3. Per learned counsel for the applicant, applicant/accused is innocent and has falsely been implicated in this case; that the applicant/accused has not committed any offence; that the charge has been framed; that the complainant witnesses are not attending the Court and due to their absence, delay has been caused in the proceedings of the Court. He lastly prays for confirmation of bail to the applicant/accused. He has placed reliance in the case of Muhammad Usman Shakir vs. The State and others (2021 SCMR 1880).

4. On the other hand, learned Addl. P.G. duly assisted by learned counsel for the complainant vehemently oppose for confirmation of bail. Learned counsel for the complainant submits that the applicant/accused undertakes to return the amount for which he has made an agreement. In support of his contention, he has placed such agreement before this Court. He has relied upon the cases of Shameel Ahmed vs. The State (2009 SCMR 174), Riaz Ahmad vs. The State (2009 SCMR 725), Asif Ayub vs. The State (2010 SCMR 1735), Atiq Niazi and another vs. The State and another (2013 PCRLJ 1145), Rajo Khan vs. The State (2010 PCRLJ 452), Hamid Ali Tanoli vs. The State (2022 YLR 602) and Zubair vs. The State (2020 MLD 1808).

5. I have heard the learned counsel for the parties and have gone through the material available on record.

6. The case of prosecution is that the applicant/accused was working in the shop of the complainant and used to sell the mobile phones to different shop keepers; however, by way of selling such mobile phones, he made fraud with the complaint. On calculation, an amount of Rs.21,42,246/- came in the knowledge of the complainant. Learned counsel for the complainant has produced sale consideration which shows that the applicant/accused has admitted the guilt and undertaken to return the amount. Further, PWs have also supported the version of the complainant in their 161 Cr.P.C. statement. At bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible. No ill-will or malafide has been shown on the part of complainant which is requirement for grant of pre-arrest bail. In this context, reliance is also placed to the case of **'Rana Abdul Khaliq v. The State and others'** [2019 SCMR 1129]. Prima facie sufficient material is available on record to connect the applicant with commission of the alleged offence.

7. In view of the above, the applicant has failed to bring his case for further inquiry as envisaged under subsection (2) of Section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicant/accused vide order dated 28.09.2022 is hereby recalled and the bail application is **dismissed**.

8. The cases relied by learned counsel for the applicant is distinguishable from the facts and circumstances of the present case.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE

Kamran/PA