

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 407 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

31-03-2023

M/s. Shaikh Javed Mir, Shaharyar Ibrahim Soho and Irshan Ahmed Mughal, Advocates for applicant.

Mr. Waqar Alam Abbasi, Advocate a/w complainant.

Mr. Faheem Hussain Panhwar, Addl.P.G.

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Omar Sial, J: Kashif has sought post arrest bail in crime number 712 of 2022 registered under sections 406, 420, 418 and 34 P.P.C. at the Boat Basin police station. Earlier, his application seeking bail was dismissed on 15.02.2023 by the learned 11th Additional Sessions Judge, Karachi South.

2. A background to the case is that one Zahid Kamal Khawaja on 14.11.2022 complained to the police that he sold a piece of property and the proceeds thereof were deposited in his account maintained with the Meezan Bank. One of his neighbors Raheel Shahid asked him as to what the complainant planned to do with the money he had received. The complainant told him that he wanted to send the money to the United States but that his Bank Manager had told him that State Bank of Pakistan's permission is required to effect the transfer. Raheel Shahid told him that he knows people who will do this for him without the State Bank intervention. Raheel then connected him to a person by the name of Asif Ramiz who then connected him to the applicant. It is alleged by the complainant that he withdrew 2 crores and 28 lacs from his account and gave them to the applicant who promised that the needful will be done within 3 to 4 days but to date the applicant has not transferred the money.

3. I have heard the learned counsel for the applicant and the complainant as well as the learned Addl.P.G. My observations and findings are as follows.

4. To start with this court shows its immense disapproval at the conduct of the complainant himself. It is obvious from the very F.I.R. that he was aware that transferring money abroad required the permission of the State Bank of Pakistan, yet, opted to circumvent the law himself by taking part in an illegal and unlawful process. It is also surprising that the complainant present in person when asked as to why he himself was attempting to circumvent the law, gave an entirely different story as to what had happened compared to what was contained in the F.I.R. His counsel also blankly refused to acknowledge that an attempt was being made to unlawfully transfer funds abroad. The learned counsel was asked to read out aloud the F.I.R. in Court subsequent to which he could not justify his previous stance. As for the complainant, he took the stance that what is stated in the F.I.R. is not what he had told the police. With much respect, I am not convinced with his submission. He is an educated person who currently is a resident of the United States. It does not appeal to logic when he says that he signed the F.I.R. without being aware as to what was exactly stated in it. It becomes a case of the pot calling the kettle black. Be that as it may, the counsel for the applicant submitted that the parties had entered into a memorandum of understanding on 30.06.2022 with the applicant. The agreement in itself gives a completely different spin to the story however it is asserted by the counsel for the complainant that this memorandum is a false and fake one. Be that as it may, it will be at trial and after the requisite evidence has been analysed by the learned trial court that the truth of what transpired between the parties will be revealed.

5. Upon a query from the complainant's counsel as to whether there was any evidence to show that the money was given to the applicant, the counsel relied on an extract of a bank statement of the complainant's that evidences the withdrawal of money from his bank. The withdrawal however was done by the complainant himself. As regards the handing over the money to the applicant is concerned the counsel submitted that there is no documentary evidence of the handing over but that the CCTV footage of the bank will show the handing over. Once again, it will be the learned

trial court that will unearth whether money was handed over or not when it has had an opportunity to evaluate the evidence produced before it and determine its admissibility. At the moment what exists is the allegation made by the complainant. The aforementioned findings make the case of the applicant one of further inquiry.

6. Offences under section 418 and 420 P.P.C. are both bailable where the applicant is entitled to bail as of right. An offence under section 406 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) in mind I do not see any exceptional or extraordinary grounds to deny the applicant bail.

7. In view of the above, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 500,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE