

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-350 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>05.05.2023</u>	For orders on office objection. For hearing of main case. Mr. Bhagwandas Bheel, advocate for applicant along with applicant, who is present on interim pre-arrest bail. Ms. Rameshan Oad, Assistant Prosecutor General Sindh. Mr. Nadir Ali Jamali, advocate for complainant.

Amjad Ali Sahito, J:- Through instant bail application, the applicant/accused namely, Kareemdad Brohi seeks pre-arrest bail in Crime No.36/2023 for the offence under section 320, 337-G, 427, 337-A (i), 337-L (ii), 279, 322 PPC registered at Police Station Taluka Nawabshah. Earlier, the bail plea of the applicant/accused was declined by the learned 2nd Additional Sessions Judge, Shaheed Benazirabad vide order dated 10.04.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case; that the applicant/accused has been shown as a owner of dumper bearing No.TKM-172 but in fact one Azhar Hussain s/o Bashir Ahmed r/o Nawabshah has filed application under section 516-A Cr.P.C. by showing that he is the real owner of the said property; that mere on suspicion the applicant/accused is involved in this case; otherwise, he is originally resident of Shikarpur and he was not present at the place of incident. He further argued that the challan has been submitted and the applicant/accused is no more required for further investigation. In support of his contentions, he has filed also filed certain

documents along with his statement, which are taken on record. Lastly he prayed that the interim pre-arrest bail granted to the applicant/accused may be confirmed.

4. On the other hand, learned counsel for the complainant has vehemently opposed the grant of bail to the applicant/accused and argued that it is practice that one person purchases the vehicle and sells the same to another without registration/transfer in the name of purchaser, but since the dumper is not transferred in the name of Sikandar Ali, as such, he is the real culprit of the offence. He further argued that four persons have lost their valuable lives due to act of the applicant being owner of dumper and same was given to a person having no valid license, as such, the applicant does not deserve for concession of bail. He, therefore, prayed for dismissal of instant bail application. In support of his contentions, learned counsel has relied upon the cases reported in 2005 P Cr. L J 1648, 2011 SCMR 1227, 2016 MLD 1714, 2021 MLD 549 and 2021 YLR 1769.

5. Learned A.P.G. Sindh has half heartedly opposed the confirmation of bail to the applicant/accused; however, she submitted that one Azhar Hussain is the new purchaser of dumper and previously on M/s. Akbar and company was the owner of said dumper.

6. Heard and perused.

7. From the face of FIR, it appears that allegation against the applicant is that he is owner of the dumper and given a dumper to a person having no valid license. From perusal of record, it reflects that Azhar Hussain is the owner of dumper, previously M/s. Akbar and company was the owner of said dumper. Admittedly, the applicant was neither driver of the dumper nor *prima facie* appears from the record that he is the owner of said dumper. It is yet to be seen when the evidence will be recorded by the learned trial Court whether applicant is owner of the property or not. When confronted with the learned counsel for the complainant that how the applicant has been involved in this case, he stated that actually he is owner of the vehicle but no proof has been submitted by the complainant to believe that allegedly applicant is the

owner of the vehicle. The investigation is complete. Applicant/accused is no more required for further investigation. Learned counsel for the applicant/accused has also pleaded *mala fide* on the part of complainant that he has involved the applicant/accused with *mala fide* and ulterior motives. So far the case law relied by the learned counsel for the complainant is concerned, as each case is to be decided by its own facts and circumstances and the facts and circumstances of cases relied are distinguishable with the instant case.

8. In view of the above facts and circumstances, learned counsel for the applicants/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, instant criminal bail application is **allowed** and interim pre-arrest bail granted earlier to the applicant/accused is hereby confirmed on the same terms and condition laid down therein.

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