

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.S- **404** of 2023
Crl. Bail Application No.S- **405** of 2023
Crl. Bail Application No.S- **406** of 2023
Crl. Bail Application No.S- **523** of 2023

Applicants : **Raheel and Khuram**
Through Mr. Abbas Ali Abbasi,
Advocate
(in Crl.B.As No.S-404 & 405 of 2023)

Kashif
Through Mr. Shaikh Jawaid Mir,
Advocate
(in Crl.B.A No.S-406 of 2023)

Murtaza Patel :
Through Mr. Raja Hassan Nawaz,
Advocate
(in Crl.B.A No.S-523 of 2023)

The Complainant : **Zahid Kamal Khawaja**
Through Mr. Aamir Nawaz Warraich,
Advocate.

Respondent : **The State** :
Through Mr. Talib Ali Memon,
Assistant Prosecutor General.

Date of Hearing : **18th May, 2023**

Date of Decision : **12th June, 2023**

ORDER

Omar Sial, J.: Kashif Memon has sought post arrest bail, whereas, Murtaza Patel, Raheel and Khurram Usman have sought pre-arrest bail arrest in crime number 183 of 2022 registered under sections 420, 468, 471 and 34 P.P.C. at the City Court police station. Earlier, their applications seeking bail were dismissed by the learned 7th Additional Sessions Judge, Karachi South on 18.02.2022.

2. A brief background to the case is that the aforementioned F.I.R. was registered on 23.12.2022 on the complaint of Mohammad Zahid. Zahid reported that all the 4 accused have committed a fraud with him to the tune of Rs. 22,800,000 and tried to kidnap him. He had already registered 2 F.I.R.'s against them. Zahid further reported that he had now come to know that the accused have prepared a fake agreement purportedly which also has his forged signature.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned APG. Both counsels have ably put forward their point of view. For the sake of brevity, they are not being reproduced but are reflected in my observations and findings below.

4. At the very heart of the case is a Memorandum of Understanding dated 30.06.2022 which reflects that it has been entered into between the complainant and accused Kashif Memon. Accused Khurram Usman and Murtaza Patel have signed the Memorandum as witnesses. Accused Raheel's role is not clear from the F.I.R., the challan or the arguments advanced. The stamp paper on which the Memorandum was executed was issued on 29.06.2022 and the parties ostensibly executed the Memorandum on 30.06.2022. Indeed, this is what the complainant also asserts in the F.I.R. Doubt arises when one notices the complaint that the complainant had written to the SHO of the City Court police station. The complainant prima facie has signed the complaint on 23.06.2022. Learned counsel for the complainant has justified this anomaly by submitting that it was a mistake. Be that as it may, at this stage, prima facie doubt is created. It makes the case against the applicants' one of further inquiry. It will have to be explained at trial as to how the complainant reported an offence 7 days prior to the execution of the Memorandum. The contents of the Memorandum are absolutely illegal and there is great doubt as to its validity. It is however not been alleged that the Memorandum was acted upon. It has been

argued by the learned counsel for the complainant that the notary public whose stamp appears on the Memorandum has denied that it is her signature and stamp. Learned counsel has also argued that the signature of the complainant appearing on the Memorandum is a forged one and that the same has also been proved by forensic analysis. I do not find any mention of such an examination in the challan which was submitted, I however have no reason to not believe the statement made by a respectable member of the Bar. Be that as it may, as it has not been explained to me by the learned APG as to how the samples of the original signatures were taken to compare with the disputed ones, under whose authority were the same sent for analysis, what document was sent for analysis, are all questions that require clarification at trial. When one looks at the entire transaction holistically, parts of which have resulted in separate cases, malafide on the part of the complainant cannot conclusively be ruled out at this stage. Malafide however does not exist in its classical sense. However, spite on behalf of the complainant to somehow or the other to take to task everybody he suspects as having a hand in his predicament, is a possibility.

5. It seems to me that the complainant has been duped in a transaction which entailed selling property in Pakistan and transferring the funds abroad. The supposed Memorandum, although a standalone document is connected with the same saga. The complainant appears to be a decent person who got embroiled in an unpleasant situation much to his financial detriment. Prima facie it seems that subsequent financial advice he got from personal sources, may not have been the most sensible or perhaps even lawful. A simple man seems to have been taken for a ride prima facie by advisers with pseudo-knowledge of how money transactions are executed and foreign currency remitted abroad. Due diligence was not done by the complainant. Legal advice was not sought by the complainant when he executed the transaction thus his contributory

negligence will also be taken into account. Be that as it may, the evidence available, on a tentative assessment does not appear to be such that the applicant be denied bail. This observation, by no stretch of imagination should be interpreted as the applicants not being guilty of the offence. That adjudication in the first instance is the domain of the trial court. As far as the recovery of money is concerned, that no doubt will be subject to civil proceedings. The applicant does not seem to, on a tentative assessment, have much to tamper with his possession by now in any case. The Memorandum is in the possession of the police although no memo of seizure has been shown to me. The punishment of the offences with which the applicants are charged, although not bailable, fall within the non-prohibitory clause of section 497 Cr.P.C. Keeping in view the principles enunciated in Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I do not find any exceptional or extraordinary reason to deny the applicant bail. In view of the rather acrimonious relationship between the parties malafide cannot conclusively be ruled out at this preliminary stage.

6. In view of the above, Applicant Kashif is granted bail subject to his furnishing surety in the sum of Rs.500,000 with a P.R. bond in the like amount to the satisfaction of the trial Court. The interim pre-arrest bail granted to the applicants Raheel, Khurram and Murtaza Patel is confirmed, however, subject to an enhanced surety of Rs.500,000 each together with a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE