

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No.1303 of 2021
Crl. Bail Application No. 989 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

03-05-2023

Dr. Farough Naseem, Moulvi Iqbal Haider, Mr. Farjad Ali Khan and Malik Waseem Iqbal, Advocates a/w applicant in B.A. No.1303/2021. M/s. Hussain Bux Saryo and Farah Naz Kazi, Advocates a/w applicant in B.A. No.989/2021.
Mr. Paras Ali Lodhi, Advocate for complainant.
Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: Nudrat Mand Khan and Syed Mehsam Raza Zaidi have sought pre-arrest bail in crime number 80 of 2020 filed under sections 489-F, 420, 406, 468, 471 and 34 P.P.C. at the Artillery Maidan police station in Karachi. Earlier, their applications seeking bail were dismissed by the learned 11th Additional Sessions Judge, Karachi South on 10.02.2021 and 05-07-2021 respectively.

2. The aforementioned F.I.R. was registered on 07.07.2020 on the complaint of one Nadeem Arif. Arif reported that Siddiqsons, the company he worked for, and Creek Marina Singapore, had entered into a joint venture which had run into trouble. As a consequence, the Chief Executive Officer of Creek, a person by the name of Shehzad Naseem, had signed a Settlement Agreement, in the presence of applicant Syed Mehsam Raza Zaidi, and had also issued 2 cheques (signed by Shehzad Naseem). The cheques when presented at the banks counters were dishonored. Nudrat Mand Khan was included as an accused at a later time.

3. I have heard the learned counsels for the applicants as well as the learned APG who was assisted by the learned counsel for the complainant.

4. Upon a query made by the court as to how an offence under section 489-F P.P.C. was made out against the applicants as it was an admitted fact that neither one of the applicants had issued the dishonored cheque. The APG and the learned counsel for the complainant have very frankly conceded that an offence under section 489-F was not made out against the applicants. They both also candidly agreed that there was no document they could show which was forged or a forged document used as an original (which is required by sections 468 and 471 P.P.C.) He also admitted that an offence under section 420 P.P.C. is a bailable offence. Ultimately, both argued that while none of the other offences was being prima facie made out, there was evidence to show that an offence under section 406 P.P.C. had been committed.

5. Section 406 stipulates the punishment for an offence of criminal breach of trust. What constitutes "criminal breach of trust" is defined in section 405 P.P.C. to mean: Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust". Learned counsel has been unable to show to me any evidence that either applicants were entrusted with property which they had converted to their own use. The case against the applicants is certainly one of further inquiry. Further, an offence under section 406 carries a potential sentence of up to 7 years and although not bailable falls within the non-prohibitory clause of section 497 Cr.P.C. Keeping the principles enunciated in the case of Tariq Bashir and 5 others vs The State (PLD 1995 SC 34) in mind, I find no exceptional or extraordinary grounds to deny the applicants bail.

6. These are pre-arrest bail applications and thus the question of malafide is also important. In this regard it has been shown to me that this court while hearing an application on the civil side, had ordered that no

coercive action shall be taken against the applicants. The F.I.R. was registered very late at night on that same date, which counsel for the complainant justifying it by saying that the order was not received by the complainant till the time he registered the F.I.R. While counsel may be correct, at this preliminary stage, malafide on the part of the complainant cannot be conclusively ruled out. It is also pertinent to mention that at the heart of the dispute is a commercial transaction between two large business entities. Several cases have been filed by both parties against each other in this regard. In a separate order passed on 28.04.2023 in CrI. Misc. Application No. 229 of 2022, this Court has delved deeper into those transactions. For the sake of brevity, the opinion in the order passed in that application is not being reproduced here. The office is however directed that if the complainant challenges this bail granting order before the Supreme Court, a copy of the order dated 28.04.2023 be also annexed along with this order for sake of facilitation of reference.

7. Above are the reasons for the short order dated 30-03-2023.

JUDGE