

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.734 of 2022

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

11.7.2023

Mr. Ali Gohar Masroof, advocate for the applicant alongwith applicant Mr. Siraj Ali Khan, Additional PG along with Syed Hammad Hussain, complainant.

ORDER

Applicant Ateeq Ahmed Khan seeks pre-arrest bail through this bail application, wherein he was booked in Crime No.1142/2021, registered under Sections 420/468/471/506/34 PPC at PS Sachal Karachi. The applicant earlier filed bail before arrest application bearing No.5578/2021 wherein he was granted interim pre-arrest bail on 17.12.2021, but later on the same was not confirmed and the interim pre-arrest bail was recalled by the learned IV-Additional Sessions Judge Malir Karachi vide order dated 02.3.2022, hence the applicant filed this bail application.

2. The learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case with malice and for an ulterior motive; that after the investigation the Investigating Officer has submitted challan under sections 420, 468, 471, 506, and 34 P.P.C, out of them, only section 468 is notailable, however, the same is not cognizable and the same also does not fall within the prohibitory clause of section 497 Cr. P.C.; learned counsel further submitted that the co-accused Sohail Ahmed has been granted bail by the trial Court vide order dated 28.09.2021. He further submitted that the alleged offense was committed on 03.06.2018, whereas, reported on 23.06.2021 almost a delay of more than three years without any plausible explanation. He next argued that there is a dispute of property and its possession which is of Civil Nature, therefore, the applicant is entitled to the confirmation of his bail granted to him by this Court vide order dated 18.04.2022.

3. On the other hand, learned APG assisted by learned counsel for the complainant has vehemently opposed this application on the ground that

the alleged amount for purchasing the property was handed over to the applicant under trust but he subsequently converted the same to his use, therefore, it is a fit case of criminal breach of trust and fraud and cheating. He has further contended that the applicant was allowed pre-arrest bail by the trial Court vide order dated 10.11.2021 subject to furnishing surety in the sum of Rs.40,000/-, however, he neither appeared before the trial Court nor furnished required surety, therefore, his conduct shows that he is not entitled for the confirmation of pre-arrest bail. He next argued that the applicant has failed to establish the malafide intention of the complainant and police in the matter. He further argued that the applicant is not entitled to a concession of bail. He further submitted that the principles for the grant of pre-arrest bail are different from the principles governing the grant of post-arrest bail and since no malice or ulterior motive has been shown by the applicant/ accused against the complainant or even against the police, therefore, he is not entitled to the relief under section 498 Cr. P.C.

4. Learned counsel for the applicant has refuted the stance of the complainant with the narration that after lodging the F.I.R. the investigation was conducted and police submitted the challan against the applicant/ accused, under sections 420, 468, 471, 506, and 34 P.P.C, out of them, only one offense under Section 468 P.P.C. is non-bailable, however, the same is non-cognizable and the same also does not fall within the prohibitory clause of section 497 Cr. P.C. There is no denial to the fact that the case of the applicant/ accused before the trial Court is based on documentary evidence and the trial court will look into every aspect of the case. So far the contention of the learned counsel for the complainant that the principles for the grant of pre-arrest bail are different from the principles governing the grant of post-arrest bail concerned, suffice to say that if the applicant/ accused is otherwise entitled to the bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him post-arrest bail. He prayed that the ad-interim bail, granted to the applicant/ accused, vide order dated 18.04.2022 may be confirmed.

5. I have heard the learned counsel for the parties and perused the material available on record with their assistance.

6. This Court is conscious of the fact that the concept of pre-arrest bail is an extraordinary relief, which is limited to rare cases based upon trumped-up charges rather it has to be extended sparingly. However, in the present case, the tentative assessment of the record reflects the following aspect of the case:-

- i) That after lodging the F.I.R. the investigation was conducted and police submitted the challan against the applicant/ accused, under sections 420, 468, 471, 506, and 34 P.P.C, out of them, only one offense under Section 468 P.P.C. is non-bailable, however, the same is non-cognizable and the same also does not fall within the prohibitory clause of section 497 Cr. P.C.
- ii) There is no denial to the fact that the case of the applicant/ accused before the trial Court is based on documentary evidence and the trial court will look into every aspect of the case.
- iii) That F.I.R. is delayed for about 3 years.
- iv) That the co-accused Sohail Ahmed has been granted bail by the trial Court vide order dated 28.09.2021.

6. No doubt, the applicant is nominated in FIR; however, it is delayed for about 3 years, for which no plausible explanation has been furnished by the prosecution for such an inordinate delay merely saying that the injured was hospitalized was/is not justifiable. The delay in criminal cases, particularly when it is unexplained, always presumes to be fatal for the prosecution. Besides, the delay of 3 years in lodging the FIR is also one of the grounds for bail and this is the reason the applicant has attributed malafide on the part of the police and the complainant. This is a prima-facie motive on the part of the complainant to make the applicant/accused in the FIR, which prima facie could be treated as an ulterior motive as discussed supra.

7. The grounds agitated by the learned counsel for the complainant cannot be assessed at the bail stage without recording the evidence in the matter as such the applicant has made out a case of pre-arrest bail in the aforesaid crime at this stage. The provision of Section 497(2) Cr.P.C confers powers upon the Court to grant bail during the investigation, inquiry, or trial subject to an opinion formed by the Court that material placed before it is not sufficient to establish guilt and it still requires further inquiry into his guilt whereas Section 498 Cr.P.C deals with two situations:-

- i) *The fixation of the amount or bond according to the circumstances;*
- ii) *Conferment of powers to grant bail to a person who is not in custody;*

8. Although the provision of Section 498 Cr.P.C is neither ancillary nor subsidiary to Section 497 Cr.P.C but is an independent Section,

however, bare reading of language of sub-section (2) of Section 497 Cr.P.C provide considerations for grant of bail under Section 497(2) Cr.P.C it practically merged Section 497/498 Cr.P.C. into one aspect qua concept of pre-arrest bail persuading it to act conjointly in all fairness. The practice for grant of extraordinary relief has passed through the transitory period with divergent interpretations qua its scope since its inception, however, the law is not static rather it is growing day by day. The Supreme Court while handing down a salutary judgment titled "Meeran Bux vs. The State and another" (PLD 1989 Supreme Court 347) enunciated the concept of pre-arrest bail which was more innovative, liberal, crafted in consonance with the intent of the legislature, hence, it has conceptually widened its scope in its entirety, elaborating its concept in the spirit of section 497/498 Cr.P.C. It was reiterated in another judgment of the Supreme Court titled "Syed Muhammad Firdaus and Others v. The State" (2005 SCMR 784). The Supreme Court virtually introduced a broadened mechanism of interpretation to adjudge the element of malafide or malice at the touchstone of the merits of the case. In the said case, mentioned above, the accused who has ascribed the injury to the deceased on the leg (simple) was granted pre-arrest bail by Sessions Judge which was recalled by the learned High Court while exercising suo-motu revisional jurisdiction, however, the order of learned Sessions Judge was restored by the Supreme Court while elaborating the principle in the above said terms.

9. Keeping in view the facts and circumstances narrated above and the judgments pronounced by the Supreme Court on the subject issue, it has made it abundantly clear that while granting pre-arrest bail, Court can consider the merits of the case in addition to the element of malafides/ulterior motives which has to be adjudged in the light of law laid down by the Supreme Court in the case law stated supra. As a consequence, Courts of law are under a bounded duty to entertain a broader interpretation of the "law of bail" while interpreting material placed before it more liberally to arrive at a conclusion which is badly required due to the apparent downfall in the standard of investigation. Otherwise, the liberty of a person is a precious right that has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. To abridge or curtail liberty merely on the ground of being involved in a criminal case without adjudging it on merits would certainly encroach upon the right against free life. This right should not be infringed, rather it has to be protected by the act of the Court otherwise it may frustrate the concept of safe administration of criminal justice.

10. The accumulative effect of the whole discussion and while seeking guidance from the above-referred case law, this Court is of the considered opinion that the applicant has made out a case for grant of extraordinary relief of pre-arrest bail, hence is squarely entitled to the same.

11. So far the contention of the learned counsel for the complainant that the principles for the grant of pre-arrest bail are different from the principles governing the grant of post-arrest bail concerned, suffice to say that if the applicant/ accused is otherwise entitled to the bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him post-arrest bail. Hence following the dictum laid down in the case of *Rehmatullah v. The State* (2011 SCMR 1332), the ad-interim bail, granted to the applicant/ accused, vide order dated 18.04.2022 is hereby confirmed subject to furnishing his further surety of Rs.450,000/- (Rupees four hundred fifty thousand only) and P.R bond in the like amount to the satisfaction of Nazir of this Court.

12. It is clarified that the reasoning given in this order is tentative and will have no effect whatsoever in any manner upon the merits of the case.

13. The applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he misuses the concession or temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well as his surety in terms of Section 514 Cr. PC. Trial Court is also hereby directed to make necessary arrangements for securing the attendance of the prosecution witnesses and conclude the trial within the shortest possible time under intimation to this Court through MIT-II.

14. These are the reasons for my short order dated 11.7.2023 whereby the pre-arrest bail of the applicant was confirmed subject to furnishing his further surety of Rs.450,000/- (Rupees four hundred fifty thousand only) and P.R bond in the like amount to the satisfaction of Nazir of this Court.

15. Bail Application stands disposed of.

JUDGE

