

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Bail Application No.679 of 2023

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Date	Order with signature of Judge
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For hearing of bail application

**09.8.2023**

Mr. Liaquat Ali Awan advocate for the applicant  
Mr. Muntazir Mehdi, Additional PG  
Mr. Hassan Khan Afridi advocate for the complainant  
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Through this criminal bail application, the applicant Amjad Hussain seeks pre-arrest bail in Crime No.420/2021, registered under Section 407 PPC at PS SITE-B Karachi after his bail plea has been declined by learned XI-Additional District & Sessions Judge, Karachi West vide order dated 07.3.2023.

2. The allegations against the applicant/accused is that on 16.11.2021 he took away vehicle No.TKE-079 containing 1400 cartons of Ghee valued at Rs.21, 55,625/- and failed to deliver the goods to Imtiaz Store, such report of the incident was lodged with PS SITE-B Karachi on 17.11.2023.

3. Learned counsel for the applicant/accused has mainly contended that the applicant is innocent and has falsely been implicated in this case; that there is a delay of one day in lodging of FIR, which is unexplained. He contends that the dispute between the parties is of civil nature and section 407 PPC is not attracted. He also argued that the offense did not fall within the ambit of the prohibitory clause and the applicant/accused is entitled to confirmation of the bail.

4. Learned counsel for the complainant has argued that the applicant/accused was nominated in the FIR with a specific role and no enmity between the accused and the complainant could be established. He also argued that the case of the prosecution was fully supported and independent and credible material is available on record to connect the accused with the commission of the offense. He added that the applicant is charged, under Section 407 of the Pakistan Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier and he committed criminal breach of trust as defined under Section 406 in respect of the property as a carrier as such he could be tried under Section 406 and 407 PPC. He further argued that the applicant has misused the concession of pre-arrest bail as he was directed to join the investigation but he failed

to do so which comes in the definition of misusing of concession of interim pre-arrest bail, therefore he is not entitled to the concession of pre-arrest bail.

5. Learned Additional PG also opposed the grant of bail to the applicant/accused on the ground that documentary proof is available on record and the applicant/accused has failed to establish any mala fide on the part of the complainant. He has prayed for the dismissal of the application.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. Perusal of the F.I.R. reflects that there is a delay of about one day in lodging the F.I.R., and the explanation so furnished for such delay does not appear to be satisfactory. Though the complainant remained silent for one day and did not report the matter to the police, which *prima-facie* proves some *malice* on his part. The delay in lodging F.I.R. is falling within the ambit of deliberation and afterthought, therefore, it is always considered to be fatal for the prosecution case in cases like the present case. Moreover, the section applied in F.I.R. i.e. 407 P.P.C., carries a punishment of up to 07 years, as such, this offense does not fall within the *prohibitory* clause of Section 497 Cr.P.C. Furthermore, the applicant has already joined the trial and attended the trial Court regularly and evidence is in progress.

8. The concept of trust envisages that one person (the settlor) while relying upon another person (the trustee) and reposing special confidence in him commits property to him. There is a fiduciary relationship between the two in law. Section 405 PPC defines criminal breach of trust as follows:

405. Criminal breach of trust.— 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.

9. The essential ingredients of criminal breach of trust under section 405 PPC are: (i) the accused must be entrusted with property or dominion over it; (ii) he must have dishonestly misappropriated the property or converted it to his use or disposes it of in violation of any trust or willfully suffers any other person to do so. The offense of criminal breach of trust resembles the offence of embezzlement under the law. The punishment for ordinary cases is provided in section 406 PPC but there are aggravated

forms of the offense also which are dealt with under sections 407 to 409 PPC.

10. The first condition mentions three important terms: entrustment, dominion, and property. “Entrustment” means handing over possession of something for some purpose without conferring the right of ownership<sup>2</sup> while “dominion” refers to “the right of control or possession over something, such as dominion over the truck”. The term “property” has been used without any qualification so it must be understood in the wider sense. There is no reason to restrict its meaning to movable property.<sup>4</sup> Further, the word “property” must be read in conjunction with “entrustment” and “dominion”. A trust contemplated by section 405 PPC would arise only when the property belongs to someone other than the accused.

11. According to the second condition, the accused must be shown to have mens rea. Section 24 PPC defines “dishonestly” as the doing of an act to cause wrongful gain to one person or wrongful loss to another person. Thus, in the context of section 405 PPC, the property must be lost to the owner or he must be wrongfully kept out of it. Dishonest misappropriation may sometimes be inferred from the circumstances if there is no direct evidence. This second condition is satisfied by any one of four positive acts, namely, misappropriation, conversion, use, or disposal of property.

12. The offense of criminal breach of trust as defined in section 405 PPC is distinct from the offense of cheating under section 420 PPC. In principal, property obtained by cheating is not capable of being fraudulently converted under section 405. The notion of a trust is that there is a person trustee or trustee, in whom confidence is reposed by another who commits property to him; this again supposes that the confidence is freely given. A person who obtains property by trick from another bears no resemblance to a trustee and cannot be regarded as a trustee under section 405. The essence of the offense under section 405 is the dishonest conversion of the property entrusted, but the act of cheating itself involves a conversion. Conversion signifies the depriving of the owner of the use and possession of his property. When the cheat afterward sells or consumes or otherwise uses the fruit of his cheating, he is not committing an act of conversion, for the conversion is already done, but he is furnishing evidence of the fraud he practiced to get hold of the property. Therefore, cheating is a complete offense by itself. The offense under section 420 is complete as soon as delivery is obtained by cheating, and without further act of misappropriation there can be no breach of trust.

13. The law recognizes a distinction between the investment of money and the entrustment thereof. In the former, the sum paid or invested is to be utilized for a particular purpose while in the latter case, it is to be retained and preserved for return to the giver and is not meant to be utilized for any other purpose.

14. Primarily, breach of trust when associated with dishonesty triggers criminal liability. Thus, even temporary misappropriation may attract section 405. On the other hand, negligence which results in loss of the entrusted property may make a person liable for damages under the civil law but would not expose him to criminal prosecution. Criminal prosecution is possible only if it is shown that the person was entrusted dominion over a particular asset.

15. The element of entrustment contemplated by section 405 PPC is conspicuously missing in the instant case. There is essentially a dispute between the owner of the vehicle and the driver regarding transporting the goods on the vehicle and its earnings. Hence, in view of what has been discussed above, in my tentative opinion, the trial court has to see whether section 407 PPC is attractive or otherwise. It is also debatable whether it can be invoked even against the applicant because he was allegedly working as a driver. It appears that the Complainant has lodged the above-mentioned FIR to mount pressure on the applicant, though the vehicle has been recovered from a deserted place.

16. In the result, this application is allowed. Ad-interim pre-arrest bail already granted to the applicant is confirmed subject to his furnishing further bail bond in the sum of Rs.200,000/- (Rupees two hundred thousand) with one surety in the like amount to the satisfaction of the Nazir of this Court.

17. Needless to say that the observations made in this order are tentative and shall not influence the trial court while concluding the case. The learned trial court is to expeditiously proceed with the trial under law, and in case of abuse or misuse of the concession of bail by the applicant, including causing a delay in the conclusion of the trial, the prosecution may approach the competent court for cancellation of bail under Section 497(5), CrPC.

18. This criminal bail application stands disposed of.

JUDGE