

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.997 of 2023

Muhammad Mohsen
applicant through:

Mr. Shah Muhammad Maitlo
advocate

The State,
through:

Mr. Muntazir Mehdi, APG
a/w ASI/I.O Asadul Ashfaq, P.S
New Town Karachi

Ali Shah Qadri,
complainant through:

Nemo

**Date of hearing:
& order :**

10.08.2023

ORDER

Adnan-ul-Karim Memon, J. – Applicant Muhammad Mohsen seeks pre-arrest bail in F.I.R No.239/2022, registered under Sections 420,468 and 471 PPC at PS New Town Karachi. His earlier bail plea has been declined by the trial Court vide order dated 06.05.2023.

2. The accusation against the applicant as narrated in the F.I.R. is that both parties entered into the sale and purchase of property i.e. House No. D-94 admeasuring 600 Sq. Yards located at KDA Scheme Drigh Road Karachi vide sale agreement dated 24.4.2018. As per complainant he paid the entire sale consideration to the applicant, however no possession of the property was given to him; and on verification of property documents i.e General Power of Attorney, Slae Deed and other documents, it was found fitious, thus the applicant committed fraud and forgery with him, such report of the incident was given to PS New Town Karachi, who lodged F.I.R against the applicant on 28.5.2022.

3. At the very outset, it has been contended by the learned counsel for the applicant that the applicant has been falsely implicated in this case and against the facts and circumstances. He further contends that the whole prosecution case is based on surmises and conjectures; that the offenses do not fall within the prohibitory clause, therefore, the applicant is entitled to the concession of bail; that the accusation against the applicant is based on malafide intention and ulterior motives, which requires further probe, as such, the case against the applicant squarely falls within the purview of exceptions provided under section 498 Cr.P.C. entitling his for pre-arrest bail till his guilt is determined by the trial

court. Learned counsel had further argued that a huge amount is mentioned in the FIR, but its payment mode has not been described. Learned Counsel asserted that neither any description of the contents of the agreement nor any pay order reference has been narrated in the same. He further contended that there is no eye witness of the subject transaction about signing the agreement, payment, and property dealing which is a mandatory provision, as the entire matter is not supported by the documentary evidence and civil litigation is already pending before this Court. Per learned counsel after the investigation the Investigating Officer has submitted challan under sections 420, 468, 471, P.P.C, out of them, only section 468 is not bailable, however, the same is not cognizable and the same also does not fall within the prohibitory clause of section 497 Cr. P.C. he prayed for confirmation of bail earlier granted to him.

4. On the other hand, learned APG defended the case of the complainant, who is called absent without intimation, however, APG has defended the impugned order declining bail to the applicant by the trial court. It has been contended that the applicant has deprived the complainant not only of a huge amount but also of valuable property, therefore, he does not deserve any leniency from this Court. Per learned APG, the alleged property was never handed over to the complainant and he was cheated after receiving the entire sale consideration of the subject property; additionally all the property documents as discussed supra were found fake as per Microfilming report, therefore, it is a fit case of fraud and forgery. He has further contended 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. At this stage learned counsel for the applicant emphasized that if for arguments, the contents of the complaint are admitted to be true, even then it is a matter of civil dispute pending adjudication before this Court, which is purely civil and needs to be trashed out in trial after the recording of evidence; that there is a delay in lodging of F.I.R. without any plausible justification.

5. Heard the learned counsel for the applicant, learned APG, and perused the material available on record.

6. After hearing the arguments of both the sides and perusing the record carefully, it has become transparent that the matter in hand, ex-facie, seems to be Civil, as it is evident from the contents of the F.I.R that there was civil transaction between the parties and both the parties agreed to sale and purchase some property in lieu of certain amount, and further there is no denial that a civil suit filed by the

parties in respect of the property is pending adjudication before this civil Court (OS). In this regard, I have specifically asked the learned APG and the Investigating Officer to show any documentary evidence in support of the accusation leveled against the applicant about fraud and forgery but they submitted that up-till the signature of the applicant on such document has not yet been verified only the document forwarded by the complainant was sent for verification however there is no such documentary evidence detected during investigation with regard the accusation made by the complainant that he handed over certain amount to the applicant through bank transaction or any document signed by the applicant about the sale and purchase of the property in question.

7. During arguments I have been informed that the investigation is completed and the applicant is no more required for further investigation. If this is the stance, merely based on bald accusation as alleged, the liberty of a person cannot be curtailed, which is a precious right guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. However, it is the Trial Court who after recording of evidence will decide about the guilt or otherwise of the applicant and until then the applicant cannot be sent behind bars.

8. Additionally out of the three alleged offences, two offences i.e., under Section 420 & 471 PPC are bailable. As far as the offense under Section 468 PPC is concerned, it is noticeable that no specific role has been ascribed to the applicant in the FIR, therefore, as far as the allegation of forgery is concerned, the case of the applicant is that of further inquiry. Even otherwise, the punishment under the said offense does not fall within the prohibitory clause of Section 497, Cr.P.C. thereby making it a matter in which grant of bail is a rule and refusal an exception as per *Tariq Bashir and Others Versus The State*, **PLD 1995 Supreme Court 34** and *Muhammad Tanvir Vs. State*, **PLD 2017 Supreme Court 733**.

9. In the case of *Aamir Bashir and another v. The State and others* (2017 SCMR 2060), the Supreme Court held that besides making out a prima-facie case for the grant of pre-arrest bail, the accused petitioner has to show some mala fide on the part of the complainant and the investigating agency, motivated by caprice and ulterior motive to humiliate and disgrace the accused person in case of arrest, however, at bail stage, except in very rare cases, it is difficult for an accused person to furnish tangible proof about the element of mala fide or foul play on the part of the complainant or the arresting agencies, therefore the Court has to look at the material available on record and draw inferences therefrom about the mala fide or ulterior motive on account of which the intended arrest of the accused is motivated. The Supreme Court also reiterated the guiding principles laid down in

the case of *Khalid Javed Gillan v. The State* (PLD 1978 SC 256), that while deciding bail petitions only a tentative assessment of the material and facts available on record is to be made and deeper appreciation of the same shall be avoided and that any fact which may not be sufficient to cast doubt of absolute nature on the prosecution case, but equally sufficient to be considered for grant of bail, cannot be lightly ignored.

10. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on *Miran Bux Vs. The State* (PLD 1989 SC 347), *Sajid Hussain @ Joji Vs. The State* (PLD 2021 SC 898), *Javed Iqbal Vs. The State* (PLD 2022 SCMR 1424) & *Muhammad Ijaz Vs. The State* (2022 SCMR 1271). Keeping in view all the facts and circumstances, the case of the applicant squarely falls within the purview of malafide and ulterior motives on the part of the complainant and police entitling him to confirmation of bail earlier granted to him.

11. For what has been discussed above, this bail application is accepted and the earlier ad-interim pre-arrest bail granted to the applicant, vide order dated 10.5.2023, is hereby confirmed. The applicant shall continue to appear before the Trial Court on every date of hearing without fail.

12. Since it is a case of alleged cheating with the complainant party, therefore, trial Court is directed to proceed with the matter expeditiously and decide the same, preferably, within 02 months after receipt of this order. No unnecessary adjournment shall be granted to either side. Compliance report be submitted to this Court through MIT-II. It is made clear that if the concession of bail is misused by the applicant or any delay in the conclusion of the trial is caused by him or anyone else acting on his behalf, the Trial Court shall be competent to recall the bail granted, after hearing the parties, strictly under the law.

13. Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case.

14. This criminal bail application stands disposed of.

JUDGE