

# THE HIGH COURT OF SINDH, KARACHI

## Criminal Bail Application No. 2511 of 2022

### For hearing of Bail Application.

Applicant/ Accused : Azharullah son of Mazharullah through Mr. Shahzad Mahmood, Advocate.

Complainant : Abdul Raheem son of Ibrahim Khan through Mr. Jamil Ahmed Ghazali, Advocate.

State : Through Mr. Saleem Akhtar Buriro, Additional Prosecutor General, Sindh.

Date of hearing : 30-08-2023

Date of order : 30-08-2023

*FIR No. 2034/2022  
U/s: 408 PPC  
P.S. K.I.A. Karachi.*

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The Applicant/ Accused seeks pre-arrest bail after the same has been declined by the Additional Sessions Judge-X, Karachi (East) by order dated 23-12-2022. The offence alleged in the FIR was under section 408 PPC, however, the challan also added thereto sections section 468 and 471 PPC.

2. Heard learned counsel and perused the record.

3. The Complainant, an officer of Shan Foods Company, lodged FIR on 29-09-2022 alleging that the Accused, who was an employee/rider of the Company, was entrusted with Rs. 200,000/- in cash every month from January 2022 to August 2022 (total Rs. 1,600,000/-) for payment to Jinnah Postgraduate Medical College [JPMC] as a grant-in-aid; that sometime thereafter, the JPMC informed the Company that they had not received the grant-in-aid for some time; that when Company confronted the Accused, he could not give any satisfactory answer, and thereafter he vanished.

4. Per the challan, the practice was that the Company would give cash to the Accused for making a pay-order from Standard Chartered Bank in favor of JPMC which would then be delivered by him to JPMC, who would then issue a receipt for the same which would be submitted by the Accused to the Company. The investigation revealed that the Accused used the copy of one genuine pay-order as a specimen to fabricate copies of other pay-orders purportedly issued by Standard Chartered Bank made payable to JPMC, and then also forged acknowledgment receipts of the JPMC which he submitted to the Company to show that the pay-order was received by JPMC - the allegation being that he pocketed the cash meant for the pay-orders.

5. Out of the four pay-orders sent by the I.O. to the Standard Chartered Bank for verification, only one was found to be genuine i.e. the one which the Accused used as a specimen to fabricate others. The fact that all of said pay-orders bear the same stationary number supports the allegation of forgery. The JPMC has also denied issuing receipts for the forged pay-orders.

6. Given the aforesaid facts, there is *prima facie* no reason to disbelieve at this stage the allegation that the Accused committed the offences alleged, and the submission of the Accused's counsel that he has been made a scapegoat by the lower staff of the Company does not appear to be convincing. No *malafides* have been attributed to the bank or to JPMC whose statements tend to support the alleged offences.

7. Though offences under section 468 and 471 PPC are not cognizable, the offence under section 408 PPC is cognizable, and as pointed out by the learned APG Sindh, the interim pre-arrest bail granted to the Accused thwarted the investigation.

8. That the offences alleged do not fall with the prohibitory clause of section 497 CrPC is not the only consideration for granting pre-

arrest bail.<sup>1</sup> It is settled law that grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations as for example to protect innocent persons against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or an alternative to post-arrest bail.<sup>2</sup> Learned counsel for the Accused is not able to demonstrate any *malafides* underlying the FIR which remains the primary test for the grant of pre-arrest bail.

9. For the aforesaid reasons the Accused Azharullah has not made out a case for pre-arrest bail. The bail application is dismissed.

Needless to state that the observations above are tentative, and that nothing herein shall be construed to prejudice the case of either side at trial.

**JUDGE**

SHABAN\*

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<sup>1</sup> *Mukhtar Ahmed v. The State* (2016 SCMR 2064).

<sup>2</sup> *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427).