

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail No. 706 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

30.08.2023

Mr. Imran Baloch advocate for the applicant alongwith applicant
Mr. Talib Ali Memon Assistant PG
Complainant Muhammad Rafiq present in person

Through the instant bail application, the applicant Muhammad Mehboob has approached this Court for a grant of pre-arrest bail in terms of Section 498 Cr. P.C. in FIR No. 563/2022 registered for offense under Section 420/468/506-B/34 PPC of P.S Liaquatabad Karachi

2. The accusation against the applicant is that he cheated the complainant of Rs. 700,000/- on demand he failed to transfer plot No.LS-30 Sector 5B-3 North Karachi and handed over fake file of the subject plot to the complainant, on verification from KDA the same was found bogus vide letter dated 19.02.2022 issued by KDA (Estate & Enforcement). Such report of the incident was given to Liaquatabad Police Station on 23.10.2022, who registered the FIR against the applicant under Section 420,468,506-B and 34 PPC. His bail was declined by Vth Additional Sessions Judge (Central) Karachi vide order dated 13.03.2023 on the premise that the applicant is nominated in the FIR and he cheated the complainant by manipulating the documents of the plot and hand over fake file of plot to complainant after receiving Rs. 700,000/-, such verification report from KDA was placed on record vide letter dated 09.12.2022.

3. Learned counsel for the applicant has submitted that the case lodged against the applicant is of a civil nature but the complainant with malafide intention converted it to criminal litigation to harass the applicant. It is further contended that the complainant had taken Rs. 400,000/- loan and he undertook to return the same within a year and it was agreed if the complainant failed to return the said amount then the applicant may take the plot of the complainant situated at A-Area Liaquatabad adjacent to Imam Bargah. Learned counsel further argued that the applicant sent legal notice to the complainant through his counsel and he failed to reply the same rather he managed the story in connivance with the police and succeeded in lodging the FIR against the applicant after delay of about five months which is malafide on the part of the complainant and police. Per learned counsel, after lodging the F.I.R. the investigation was conducted and police submitted the challan against the applicant/ accused, under Sections 420, 468, 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. Learned counsel also relied upon the statement dated 30.08.2023 and submitted that the applicant has filed Civil Suit No. 896/2023 before IXth Civil Judge Karachi Central against the complainant for recovery of the amount of Rs. 400,000/- which is also pending adjudication He lastly prayed for allowing the bail application.

4. The learned APG assisted by the complainant who is present in person has opposed the bail application and argued that the applicant induced the complainant to hand over the amount of Rs.700,000/- for the purchase of the plot, which handed over to the applicant under trust but he subsequently converted the same to his own use and refused to give possession of the subject plots, therefore, it is a fit case of criminal breach of trust, 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. he next submitted that prosecution has collected sufficient material to connect the applicant with the aforesaid crime on the premise that the KDA has verified the documents handed over to the complainant and were found fake. So far as the delay in lodging the FIR is concerned the applicant approached the police in time however on refusal he filed criminal Miscellaneous Application No. 1771/2022 before the learned Additional Sessions Judge Karachi Central who directed for lodging of the FIR. Thus there is no delay on the part of the complainant. Learned counsel also relied upon the USB and submitted that there is a voice recording of the applicant on the subject point involved in the matter.

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

6. Though the offenses under sections 420, and 506 PPC are bailable, the offence under Sections 468 and 506-B PPC are not. As pointed out by the learned APG Sindh, the interim pre-arrest bail granted to the accused has thwarted the investigation process.

7. It is settled law that the grant of pre-arrest bail is an extraordinary relief, which may be granted in extraordinary situations, 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. In the present case, the complainant has raised his voice of concern that the applicant has cheated him and deprived him of a legitimate amount by exerting pressure and inducing him to deliver the amount of Rs. 700,000/- that was finally handed

over for purchasing the plot in question. Neither the plot was given nor the amount was returned. So far as the alleged claim of the loan amount is concerned the same is a prima facie defense plea and needs to be taken care of by the trial Court after recording the evidence of the complainant and at this stage, the claim and counterclaim of the parties cannot be adjudicated in bail matters.

8. Learned counsel for the applicant is not able to demonstrate any malafide in lodging the FIR nor is his arrest being sought with malafide and ulterior motives on the part of police, which remains the primary test for the grant of pre-arrest bail.

9. For the aforesaid reasons the applicant/accused has not made out a case for pre-arrest bail in terms of Section 498 Cr.P.C. The interim bail order dated 03.4.2023 is hereby recalled, consequently, the bail application is dismissed with direction to the learned trial Court to examine the complainant within one month positively and if the charge is not framed the same shall be framed on the next date of hearing.

10. Needless to say the observations above are tentative and that nothing herein shall be construed to prejudice the case of either party at trial.

JUDGE