

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1798 of 2023

Date	Order with signature of Judge
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For hearing of bail application

12.9.2023

Mr. Irfan Ali advocate for the applicant
Mr. Zahoor Shah, Additional PG

Through this criminal bail application, the applicant Muhammad Iqbal seeks pre-arrest bail in Crime No.500/2022, registered under Section 406/420 PPC at PS Gadap City Karachi after his bail plea has been declined by learned IIIrd Additional Sessions Judge/Model Criminal Trial Court (Malir), Karachi West vide order dated 07.8.2023.

2. The allegations against the applicant/accused are that on 22.05.2022 the complainant gave Rs. 600,000/- to the applicant to buy a vehicle and on approach, the applicant promised that he would give him his due amount within 15 days, neither he delivered such vehicle nor returned his amount, compelling him to report of the incident to PS Gadap City Karachi on 28.11.2022.

3. Learned counsel for the applicant/accused has mainly contended that the applicant is innocent and has falsely been implicated in this case; and that the FIR is delayed more than 8 months without plausible explanation. He has further contended that both sections do not fall within the prohibitory clause of Section 497 Cr. P.C. However Section 420 PPC is bailable and Section 406 PPC is not made out for the reason that there is no documentary evidence available with the complainant to show whether he handed over Rs. 600,000/- to the applicant to buy a vehicle. He contends that the case of the prosecution is covered under sub-section 2 of Section 497 of the Code of Criminal Procedure 1898 and therefore fit for further inquiry. He lastly prayed for allowing the bail application.

4. Learned Additional PG also opposed the grant of bail to the applicant/accused on the ground that 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.

5. Notice of this bail application was served upon the complainant, however, he is called absent without any intimation in such circumstances,

I have heard the learned counsel for the applicant as well as learned Addl. P.G representing the State and perused the material available on record.

6. After hearing the arguments of both 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 a civil transaction between the parties on the issue of sale and purchase of the vehicle. This issue primarily has to be decided by the learned trial Court. It is a well-settled law that no one could be prosecuted based on vague and unspecified allegations. The offense under Section 420 PPC applied by the prosecution is bailable whereas the ingredients of Section 406 PPC are yet to be determined by the trial Court whether applicable in the facts and circumstances of the case or otherwise.

7. Prima facie, the complainant had tried to convert a civil and business dispute in a criminal case to exert pressure; and the learned trial Court has to evaluate the same judiciously, independently.

8. The intent behind the grant of bail is to safeguard the innocent person from the highhandedness of police/ complainant if any; and, very strong and exceptional grounds would be required to curtail the liberty of the accused charged, before completion of the trial, which otherwise is a precious right guaranteed under the Constitution of the country.

9. Besides the above In the case of *Tariq Bashir V. The State (PLD 1995 SC 34)* the Court has taken notice of stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offenses punishable with imprisonment of fewer than 10 years and held that “grant of bail in such offenses is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded.” While elaborating exceptions, albeit it was mentioned that if there is a danger of the offense being repeated, if, the accused is released on bail, then the grant of bail may be refused but it is further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not to be based on Surmises and artificial or weak premise. Even otherwise to ensure that the accused may not repeat the same offense, if, released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offense would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such ground should not be an absolute bar in the way of grant of bail. It may be noted that there is a sky-high

difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration. It is a settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in a particular category of offenses without placing any prohibition on such discretion.

10. Once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by this Court under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973 is binding on all subordinate Courts. My view is supported by the decision rendered by the Honorable Supreme Court in the case of *The State v. Syed Qaim Ali Shah (1992 SCMR 2192)* and the famous case of *Khan Asfandyar Wali and others v. Federation of Pakistan (PLD 2001 SC 607)*.

11. I expect the Courts below to adhere to these binding principles in the future and not to act mechanically in the matter of granting or refusal of bail because the liberty of citizens is involved in such matters, therefore, the same should not be decided in a vacuum and without proper judicial approach.

12. In view of the facts and circumstances narrated above, I am of the considered view that the learned trial Court has erred in appreciation of law on the subject while rejecting the pre-arrest bail of the applicant, hence, the same is set at naught, as a consequent I am of the considered view that the case of the applicant is based on malafide intention of the complainant and ulterior motives and fully covered under section 498 Cr.PC, entitling for the concession of pre-arrest bail.

13. The epitome of the above discussion is that there are sufficient grounds for the confirmation of the pre-arrest bail, resultantly, this bail application is allowed and the ad-interim pre-arrest bail already granted to the applicant vide order dated 18.08.2023 is hereby confirmed on the same terms and conditions.

14. Needless to mention any observations made in the above order are tentative and shall not influence the trial court in any manner.

JUDGE