

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2275 of 2022
Criminal Bail Application No.2115 of 2022

Applicant : Naeem Akhtar S/o Yar Muhammad
in B.A. No.2275/2022 Present in person.

Applicants : i. Iqbal Arfani
in B.A. No.2115/2022 ii. Saleem Arfani
both sons of Khuda Bux Arfani
Through Mr. Irfan Yaqoob Arfani,
Advocate

Complainant : Muhammad Yousuf S/o Muhammad
Punhal
Present in person.

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. Prosecutor General, Sindh.

Date of hearing : 16.08.2023

Date of order : 16.08.2023

ORDER

AMJAD ALI SAHITO, J – Through a single order, I intend to dispose of both the bail applications wherein applicants/accused seek pre-arrest bail in Crime No.680/2022 registered under Sections 420, 406, 468, 471, 34 PPC at PS Defence, after their bail plea has been declined by Additional Sessions Judge-XI, Karachi South vide order 27.10.2022.

2. The details and particulars of the FIR are already available in the memo of bail application and FIR, which can be gathered from the copy of FIR attached with the application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel, applicants/accused are innocent and have falsely been implicated in this case; that the FIR is

delayed about three years; that no specific role has been assigned against the applicants; that no transaction has been proved which shows that the amount has been paid by the complainant to the applicants; that outstanding amount, if any, is lying with Muhammad Khan but not with the present applicants nor they have issued any cheque. He lastly prays for confirmation of bail to the applicants/accused. In support of his contentions, he has relied upon the cases 2021 PCRLJ Note 23 (Asif Raza Mirjat and another vs. The State), 2022 YLR Note 113 (Muhammad Akram Faheem vs. The State and 2 others), 2021 YLR Note 50 (Mumtaz Ali Solangi and 5 others vs. The State), 2017 PCRLJ 561 (Sheraz vs. The State), 2014 YLR 1190 (Saeed Ahmed and another vs. The State) and 2010 MLD 1970 (Muzamil Riaz vs. The State).

4. On the other hand, complainant present in person states that the accused persons have grabbed amount of Rs.12,000,000/- and in lieu thereof, they have given 20 appointment letters of different positions; however, after receiving the same, when the persons went to the office to join their duties, they came to know that these orders are fake. He further submits that when this issue was brought to the knowledge of the applicants, then accused Iqbal and Saleem ensured their help in joining their duties in the school. Lastly, he prays that their bail may be dismissed. Learned APG also supports the version of the complainant.

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

6. Admittedly, the name of the applicants/accused transpires in the FIR with specific role that they have committed cheating and fraud with the complainant. The applicants received an amount of Rs.12,000,000/- on the pretext that they will provide 20 appointment orders for the job of Teachers, Lab Attendants, Naib Qasid, Peon etc.; however, after receiving the same, the concerned persons went to the office for joining their duties but they came to

know that these orders are fake and fabricated. The role assigned against accused Saleem and Naeem is that they are working in the school and allowed the concerned persons to join their job on the basis of the said fake orders. Complainant states that due to intervention of the *notables*, a *Faisla* was held in which the accused admitted their guilt and in lieu of compensation, they handed over a Cultus Car bearing No.AWZ-071 and one motorcycle bearing Registration No.KGY-3098 so also cash amount of Rs.500,000/- to the complainant, as such, prima facie the applicants committed cheating and fraud with the complainant. He further submits that stamps, fake orders and other documents are available in their house and they are still issuing fake orders to other people of the locality. At bail stage, only tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the applicants/accused, which could be the ground for false implication in this case.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of **'Rana Abdul Khaliq v. The STATE and others'** [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every

run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, the instant bail applications are **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicants/accused vide orders dated 31.10.2022 passed in CrI. B.A. No.2115/2022 & 23.11.2022 in CrI. B.A. No.2275/2022 are hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

Kamran/PA

JUDGE