

## ORDER SHEET

### IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application No.S-149 of 2023  
(Munwar Ali and another Vs. The State)

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Date	Order with signature of Judge
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1. *For Orders on office objection..*
2. *For hearing of bail application*

Mr. Haji Shamsuddin Rajper, advocate for the applicants.  
Ms. Rabia Bhatti advocate for the complainant.  
Syed Sardar Ali Shah Rizvi, Additional P.G for State

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**ORDER**  
**07-08-2023**

**KHADIM HUSSAIN SOOMRO, J:** Through this bail application, applicants Munwar Ali and Musavir Ahmed seek their admission on pre-arrest bail in Crime No. 27/2023, offence u/s 471, 463, 468, 420, 506/2 PPC registered at Police Station Abad Sukkur. The applicants have preferred their pre arrest bail application before the Court of Sessions, Judge Sukkur, which subsequently was assigned to the Court of Vth Additional Sessions Judge Sukkur, where the interim bail granted to them was recalled and bail application filed by them was dismissed vide order dated 28-02-2023, hence this bail application.

2. Brief facts of the prosecution case are that complainant Suresh Kumar lodged the FIR on 15-02-2023 alleging therein that on 17-10-2023 he, Suresh Kumar Hindu, Kifayatullah Khoso came at Lasani Food Center Sukkur, where accused Munwar Ali, Musavir Ali both by caste Soomro and one unidentified person also came and they sold out plot No.10/A measuring 444 squire yards situated in Government Cooperative

Housing Society to the complainant in sum of Rs. 03 crore and 10 lacs, such agreement was reduced in writing, then within 2/3 days complainant has paid Rs. 75,00,000/- (seventy five lacs) to them. Thereafter complainant went to the above said plot and inquired from the local peoples about the ownership of the plot, where he came to know that the plot belongs to one Muhammad Bux Abbasi, hence complainant got verified the documents, but same became forged. Thereafter complainant came to Munwar and Masroor Ali Soomro where one unidentified person was also available, whom he disclosed the above facts and asked them that they have committed fraud with him and demand to refund his paid amount, on which all three accused persons took out the pistols and pointed upon the complainant and threatened not to demand the paid amount again, otherwise they will commit his murder, hence complainant appeared at PS and lodged the above said FIR.

3. Learned counsel for the applicants submits that applicants/accused are innocent and have falsely been implicated in this case by the complainant with malafide intention and ulterior motive; that the applicants have no concern with the incident and complainant party are highly influential persons; that as per contents of FIR it has been alleged that applicants/accused have sold out plot No.10/A for consideration of amount of Rs. 03 corore and 10 lacs, but neither there is oral agreement in presence of the witnesses nor same was reduced in writing; the offence as alleged by the complainant is non-performance of contract; that applicants have denied the execution of the contract between them and complainant; that malafide on the part of the

complainant is apparent from the record that on the one hand complainant Suresh Kumar lodged this FIR and on the other hand one Om Parkash has manipulated the agreement on the same subject plot, hence submits that case against applicants requires further enquiry, therefore, pray for confirmation of interim pre arrest bail.

4. On the other hand, learned counsel for the complainant submits that applicants are habitual offenders and they have committed fraud with various persons, she submits a copy of allotment order which shows that one Muhammad Bux is owner of plot in question; that the applicants are involved manipulating the false documents, which she has submitted along with her statement. She relied upon the case of *Syed Raza Hussain Shah Vs. The State and another (2010 MLD 1807)*.

5. Learned Additional P.G for the State submits that offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, conceded the arguments advanced by learned counsel for the applicants/accused.

6. Heard learned counsel for the parties and have gone through the material made available before me on record.

7. It transpires from the record that the complainant claims to have purchased plot No 10/A measuring 444 squire yards situated in Government Cooperative Housing Society from the accused and such written agreement is available to him, but as per learned DPG, the complainant did not produce the alleged written agreement to the investigating officer, so it is not part and parcel of the police file. Moreover, during the arguments, the alleged sale agreement has not been produced before this court. As per the complainant that he purchased the

plot in question for valuable consideration an amount of Rs. 03 Crore 10 Lacs, out of which Rs. 75 lacs have been allegedly paid to the accused persons, but there is no proof of such financial transaction between the complainant and the accused. Neither there is a receipt of the payment nor such acknowledgement is available with the complainant. A contract and its breach can only be determined by the civil court in a suit after leading evidence; therefore, the matter between the parties is purely of civil nature. The malafide on the part of the complainant can be judged from the facts that, on one hand, he claims to have purchased the plot in question in presence of the witnesses each, namely Haresh Kumar and Kafyтуallah, on the contrary, the counsel for the complainant produced a copy of the sale agreement dated 17-10-2022, in respect of the same plot in question which purporting to show that one Om Parkarsh purchased it, interestingly date of the transaction and witnesses in both transactions viz in favour of the complainant as well as one Om Parkash are also same, it is yet to be determined as to whether the plot in question is purchased either by the complainant or one Om Parkash which makes the case of prosecution highly doubtful and the benefit of the doubt can be extended to accused at the bail stage. In the case of *Muhammad Tanveer V. State (PLD 2017 SC 733)*, Hon'ble Supreme Court of Pakistan has expressed an astonishment and saddened that bail is routinely denied in situations and in offences don't come within the restriction provided in section 497 of the Cr.P.C on dubious justifications and the same was considered as an unnecessary financial burden on the general public, especially those accused of such crimes. The relevant ratio of the judgment is reproduced as under:-

*"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation.*

8. The Hon'ble Supreme Court in case of *Muhammad Imran v. The State (PLD 2021 SC 903)* has formulated the grounds for the case to fall within the exception meriting denial of bail as (a). the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further, Hon'ble Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exceptions on the basis of the material available on the record. In the case in hand, the prosecution has failed to establish any of the above grounds meriting denial of the application of the applicant. It is also settled by the Hon'ble Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record. Moreover, the offence with which, the

applicants are charged does not fall within the prohibitory clause of section 497 Cr.P.C, therefore case against them requires further enquiry. In these circumstances and in view of above as well no objection extended by learned Additional P.G for the State, instant bail application is hereby allowed. Consequently interim pre arrest bail already granted to them is hereby confirmed on same terms and conditions. Resultantly instant Crl. Bail Application is disposed off accordingly.

J U D G E

Nasim /PA

