

THE HIGH COURT OF SINDH AT KARACHI

CrI. Bail Application No. 2653 of 2024

Applicant No.1 : Munir Ahmed
through Mr. Ashfaque Ahmed,
advocate a/w applicant

Applicants No.2&3 : Sher Zaman Khan & Syed Wali Khan
through Mr. M.R. Sethi, advocate
a/w applicants

Respondent : The State
through Mr. Qamaruddin Nohri,
Deputy Prosecutor General

Complainant : Qazi Abdul Razzaq Khosa
through Mr. Asif Ali Khoso, advocate

Date of short order : 3rd March, 2025

Date of reasons : 4th March, 2025

ORDER

Jan Ali Junejo, J.-- The present Criminal Bail Application has been filed on behalf of the Applicants/Accused, who are seeking pre-arrest bail in connection with a case stemming from FIR No.329 of 2024, registered at P.S. Site-B, Karachi, under Sections 382/34, P.P.C. The Applicants/Accused initially approached the learned Sessions Court by filing Bail Application No. 5140 of 2024, which was subsequently dismissed by the Court of the learned VIIth Additional Sessions Judge, Karachi-West, vide Order dated 11-11-2024. The Applicants/accused were granted ad-interim pre-arrest bail by this Court vide Order dated: 14.11.2024.

2. The facts relevant to the present criminal bail application are as follows:

“The complainant, Qazi Abdul Razzak Khosa, a resident of Hub, District Lasbella, reported that his disobedient son, Munir Ahmed Khosa, had fallen into bad company, leading him to disinherit him. He had previously reported the misplacement of four vehicle files to the police and published notices in newspapers. On October 6, 2024, at around 12:30 PM, his bus (PE-4142) was forcibly taken from its driver and conductor at Paraacha Chowk, Sher Shah, Karachi, by his son Munir Ahmed Khosa, along with Sher Zaman, Saeed Wali Pathan, and 10-15 unidentified individuals. A video recording confirms their involvement, and the vehicle they arrived in (BBX-517) is registered in Sher Zaman’s name. The complainant had already lodged FIR No. 134/2024 at P.S. Berut Hub against the accused and now seeks legal action as per the orders of VI/ASJ Karachi West”.

3. The learned counsel for the Applicant has argued that the applicants/accused are innocent and have been falsely implicated in the case with mala fide intentions, as the matter is purely of a civil nature involving business transactions rather than a criminal offense under Section 382 PPC. He further contends that the offense does not fall within the prohibitory clause of Section 497 Cr.PC, and in the absence of prima facie evidence, the applicants are entitled to pre-arrest bail. He argued that the unexplained delay in lodging the FIR, lack of prior criminal record, and absence of independent witnesses render the case one of further inquiry under Section 497(2) Cr.PC. He further submits that the arrest of the applicants would cause undue humiliation and reputational harm, particularly when the dispute should have been resolved through civil proceedings. He contends that the allegations are vague, unsubstantiated, and solely based on the complainant's statements without corroborative evidence, which fails to

justify the applicants' arrest. He further argues that the fundamental rights of the applicants, particularly their right to liberty under Article 9 of the Constitution, would be infringed upon without just cause, and therefore, they are entitled to the concession of pre-arrest bail under Section 498 Cr.PC.

4. The learned Deputy Prosecutor General as well as the learned counsel for the Complainant have argued that the applicants/accused are directly nominated in the FIR with specific allegations of committing robbery under Section 382 PPC, which is a serious offense affecting public safety and order. They further contend that the offense carries severe punishment and falls within the scope of a cognizable and non-bailable offense, making them ineligible for pre-arrest bail. They argued that the complainant has provided a consistent version of events, and the delay in lodging the FIR is well-explained, thus not affecting the prosecution's case. They further submit that pre-arrest bail is an extraordinary relief meant to prevent misuse of arrest powers and cannot be granted when there are reasonable grounds to believe the accused are involved in the commission of the offense. They contend that the applicants' plea that the matter is of a civil nature is misconceived, as the FIR discloses a clear criminal act involving theft or robbery, which cannot be resolved through civil proceedings. It is further argued that the accused persons have failed to establish any mala fide on the part of the police or complainant, which is a prerequisite for granting pre-arrest bail. They further submit that the absence of independent eyewitnesses does not exonerate the accused, as direct evidence from the complainant is sufficient for establishing their involvement. They argue that pre-arrest bail cannot be granted merely on the basis of alleged reputational harm or fundamental rights, as the rights of the victim and the need for

justice must also be considered. They contend that the accused have a reasonable apprehension of arrest based on substantial material available on record, and therefore, their bail application is liable to be dismissed. Lastly, they prayed for dismissal of bail application.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused, the learned counsel for Complainant as well as the learned Deputy Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. After a detailed and careful examination of the case record, it is clear that the complainant and Applicant No. 1 are father and son, and they have had prior disputes concerning vehicles, including the one in question, as indicated in the contents of the First Information Report (F.I.R.). Additionally, the record shows that there are contractual agreements between Applicant No. 1 and Applicants Nos. 2 and 3 regarding the subject vehicle and other vehicles. These disputes are fundamentally civil in nature and should typically be resolved in a civil court rather than through criminal proceedings. The F.I.R. was filed 18 days after the alleged incident, even though the accused individuals were known to the complainant. No reasonable explanation has been provided for this significant delay, which casts doubt on the credibility of the prosecution's case and suggests the possibility of fabrication or an afterthought. The allegations in the F.I.R. are vague and lack specific details, failing to demonstrate any clear act of violence, intimidation, or criminal intent on the part of the applicant. While the prosecution claims the existence of video evidence, it is yet to be examined and evaluated during the trial. Furthermore, the prosecution has not presented any exceptional circumstances to justify the criminal proceedings in

this matter. The overall circumstances indicate that the criminal proceedings might have been initiated as a pressure tactic to settle a personal and financial dispute. The use of criminal law to settle civil disputes has been repeatedly discouraged by Superior Courts. Contractual disputes inherently fall under civil law, which governs private rights and remedies arising from agreements between parties. Civil law focuses on compensatory justice (e.g., damages, specific performance). In contrast, criminal law addresses offenses against the state/society, requiring proof of *mens rea* (guilty mind) and *actus reus* (guilty act), with penalties like imprisonment. Breach of contract, absent criminal intent, lacks the elements necessary for criminal liability. In Case of *Ramzan and other v. The State and others* (2016 SCMR 1415), it was held by the Honourable Supreme Court of Pakistan that: “.....*that no specific role has been attributed to the petitioners in the FIR and that prima facie the dispute qua the land appears to be more of civil in nature than criminal. In these circumstances, mala fide on the part of the complainant for false implication of the petitioners cannot be ruled out*”. In another Case of *Shaikh Muhammad Taqi v. The State* (1991 P.Cr.L.J. 963), it was held by this Court that: “*The tendency to view a criminal action as a handy means to constrain a person’s conduct cannot be under-scored. We are still left with people in this country who are prepared to pay a price for their fair name and the spectre of a criminal prosecution can often compel them easily to relent on a stand which is otherwise well founded in law and in equity. It is this growing abuse of the process of a Criminal Court that has to be guarded against. The difficulty for the Court itself often arises on account of the overlapping nature of a civil and criminal cause. But yet with a prudent application of mind it should be possible to draw a distinction between the two. It is perhaps well to remember that the word “crime” suggests that not only should a man have brought about the forbidden act us but*

also that the line of conduct which he had voluntarily continued to that conclusion was inspired, or at least accompanied, by mens rea. The accused in other words, shall have been actuated by a legally reprehensible attitude of mind”.

6. After careful consideration of the aforementioned factors and legal grounds, the bail application submitted on behalf of the Applicants/accused is hereby **allowed**, granting the requested relief. The ad-interim pre-arrest bail previously granted to the Applicants/accused *vide* Order dated 14.11.2024 now **confirmed**, subject to the same terms and conditions outlined in the aforementioned interim order. The Applicants/accused shall continue to comply with all bail obligations, including attendance before the learned trial Court. It is expressly clarified that the observations and conclusions rendered in this order are **strictly limited to the disposal of the present bail application** and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or defense—during the trial proceedings. The trial court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage.

7. Above are the reasons for the short order dated 03.03.2025, whereby interim pre-arrest bail granted earlier to the applicants *vide* order dated 14.11.204 was confirmed on the same terms and conditions.

JUDGE