

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI.

Criminal Bail Application No.2172 of 2023

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| Date | Order with signature of Judge |
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For hearing of bail application.

16.01.2024.

Mr. Waqar Alam Abbasi, Advocate for the applicant.
Mr. Ghulam Rasool, Advocate for the complainant.
Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.

MOHAMMAD KARIM KHAN AGHA, J:- The Applicant Muhammad Irfan S/o. Syed Sultan Ahmed is facing trial before the Judicial Magistrate Malir in respect of FIR No.424/2023 U/s. 406/420/34 PPC, P.S. Gadap City. The applicant applied for pre-arrest bail which was declined by the Additional Sessions Judge-VIII, Malir, Karachi vide order dated 26.09.2023.

2. The brief facts of the case as per the FIR are that on 28.09.2021 the complainant booked a Flat measuring 1410 Sq. Feet, 7th Floor, A.A. Heights, Registration Form No.2607700 and paid an amount of Rs.15,00,000/- to Syed Muhammad Irfan owner of AA Heights, Al-Shams Enterprises who was the builder of the flat, however, she did not receive possession of the flat. At that time her husband was also working as CEO Marketing who then allegedly took different installments from her in respect of the flat, as such FIR was registered under the above allegations against the applicant and her now ex-husband Faheem Younas who is absconder in this case.

3. I have heard the parties and perused the record.

4. Learned counsel for the applicant has produced agreement for Real Estate Marketing Services between himself and co-accused Faheem Younas which at section 1.10 states that the security deposit only to be

paid by Mr. Faheem Younas for marketing purposes amounting to Rs.50,00,000/-. He also pointed out the authority letter whereby Mr. Faheem Younas gave authority to the complainant to act for all his property related issues and as such he claims that Rs.15,00,000/- was paid by the complainant on the basis of this authority letter in order to satisfy clause of section 1.10 Security Deposit of the marketing agreement. On the other hand learned counsel for the complainant has produced a document which according to him shows that the consideration amount was made in respect of purchase of the property.

5. This is clearly a case of two different versions and therefore, is a case of further enquiry. Even otherwise the offence for which the applicant has been charged carries a maximum sentence of 07 years imprisonment. Under the law it is well settled by now that when an offence attracts a maximum sentence of less than 10 years, bail should be granted unless some exceptional circumstances exist to decline the bail. I have not seen any exceptional circumstance in this case. The case also revolves around documentary evidence and as such cannot be tampered with by the applicant and the applicant is no longer required for investigation. It appears that there might be some malafide between the absconding co-accused Faheem Younas and the complainant with the applicant as allegedly as per CDR he is still in contact with his ex-wife.

6. Under these circumstances the pre-arrest bail earlier granted to the applicant Syed Muhammad Irfan S/o. Syed Sultan Ahmed is confirmed on the same terms and conditions. It is made clear that this order is only after a tentative assessment of the evidence available on record and would have no bearing of the outcome of the trial of the applicant which shall be decided by the concerned trial Court based on the evidence placed before it.

7. This pre-arrest bail application is disposed of in the above terms.

JUDGE