

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2250 of 2025

Applicant : Burhanuddin
Son of Fakhruddin Akbar Ali
through M/s. Irshad Ahmed Jatoi,
ABid Jatoi, Muhammad Yaseen
Jatoi and Syed Muhammad Nabeel
Mustafa, Advocates

Complainant : Imran Asghar son of Asghar Ali
Through: Nemo

The State : Through Mr. Sharafuddin Kanhar,
Assistant Prosecutor General, Sindh
a/w SI-Shahnawaz of PS Memon
Goth, Karachi

Date of hearing : 03.06.2026.

Date of decision : 03.06.2026.

ORDER

Jan Ali Junejo, J.- The present applicant seeks pre-arrest bail in FIR No.147/2023, under Section 420/406/506/34 PPC registered at Police Station Memon Goth, Karachi, calling in question the order dated 28.08.2025 passed by the learned Additional District & Sessions Judge-VII, Malir at Karachi, whereby his pre-arrest bail application was dismissed. The Applicant was granted ad-interim pre-arrest bail by this Court vide Order dated: 01.09.2025.

2. The prosecution case, as set out in FIR No.147/2023, is that the complainant Imran Asghar resides at the address mentioned in column No.2 and is engaged in the business of buying and selling livestock. He maintains a cattle yard at Memon Goth, Deh Kharkhar, District Malir. On 20.03.2023 at about 5:00 p.m., while present at his cattle yard along with his laborers, accused Burhanuddin son of Fakhruddin and Muhammad Rafiq Gul Muhammad Gul Khan visited the yard to purchase animals. The accused selected and agreed to purchase twelve Sahiwal-breed buffaloes at the rate of Rs. 300,000/- per buffalo, making the total sale consideration Rs. 3,600,000/-. At the time of the transaction, they paid Rs. 500,000/- as advance and undertook to pay the remaining amount of Rs. 3,100,000/- within one month. Thereafter, the accused took possession of the buffaloes but failed to pay the outstanding amount. Despite repeated efforts by the complainant to contact them, their mobile phones remained

switched off and they avoided meeting him. It is alleged that the accused dishonestly and fraudulently took away the buffaloes without making full payment, thereby causing financial loss to the complainant and committing the offences of fraud and criminal breach of trust, leading to the registration of the present case.

3. Learned counsel for the applicant submits that the applicant is innocent, law-abiding citizen belonging to a respectable family and have been falsely implicated in the present case on the basis of a concocted and fabricated story due to mala fide intentions and ulterior motives of the complainant. He contends that the matter, even if taken at its face value, is purely of a civil nature arising out of an alleged business transaction, which has been given a criminal colour to exert pressure upon the applicants and damage their reputation and business. He further argues that there was no written agreement between the parties, the FIR was lodged after an unexplained delay of about one month and twenty-three days, and no recovery, independent witness, or documentary evidence has been produced to substantiate the allegation regarding the alleged sale and delivery of twelve buffaloes. Learned counsel maintains that the essential ingredients of offences under Sections 406 and 420 PPC are absent, as there was neither any entrustment of property nor any material indicating dishonest intention on the part of the applicants at the inception of the transaction; mere non-payment or breach of a promise does not constitute the offence of cheating. He further submits that there is no evidence connecting the applicants with the alleged crime, no eyewitness account exists, and the allegations require deeper probe and assessment, thereby bringing the case within the ambit of further inquiry under Section 497(2) Cr.P.C. It is also contended that the applicants have no previous criminal record, are permanent residents of Pakistan, and there is no likelihood of their absconding or tampering with the prosecution evidence. Learned counsel further submits that the offences alleged do not fall within the prohibitory clause of Section 497 Cr.P.C., while applicant is suffering from a foot fracture and requires proper medical treatment; therefore, he prays that the pre-arrest bail be confirmed.

4. Learned APG, Sindh 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. After hearing the arguments 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 livestock. 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 & 506 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.

6. 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.

7. 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.

8. 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 3 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.

9. 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 of further inquiry, entitling for the concession of pre-arrest bail.

10. 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 01.09.2025 is hereby confirmed on the same terms and conditions.

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

These are the reason of short order dated: 03.06.2026.

JUDGE