

# HIGH COURT OF SINDH, KARACHI

Crl.Bail.Appln.No. 1581 of 2016

**Before**

Muhammad Ali Mazhar-J  
Adnan-ul-Karim Memon-J

Mohammad Farooq, Walidad, & Shahzad, applicants through : M/s Prof.Jamal Ahmed S. Mufti & Muhammad Farooq, advocate

The State, respondent through : Mr. Muhammad Iqbal Awan, APG

Date of Hearing : 26-12-2016

Date of Order : 26-12-2016

## **ORDER**

**MUHAMMAD ALI MAZHAR—J.**,The applicants have applied for post arrest bail in crime No. 117 of 2016, lodged under Section 448, 380, 383, 384, 427, 109 & 34 P.P.C read with Section 7 of A.T.A 1997 at Police Station Korangi Industrial Area, Karachi.

2. The brief facts of the case are that the complainant Muhammad Riaz lodged the FIR on 03-02-2016 stating therein that he purchased the plot No. A-12 Sector 8-F, Gulzar Colony Karachi from Rahimzada son of Fazal Khan who had given vacant possession of the plot and transferred the same in the name of complainant. The complainant for the purposes of construction brought one truck of gravel, fifty bags of cement and five hundred blocks and put it in his own lock. On 31-12-2015 he went to Punjab in some emergency. On 02-01-2016 one Haji Khadim Hussain informed the complainant that applicant Nos. 1 & 2 along with Sahibzada and Matidad and their companions have stolen block, gravel and cement from his plot and they have encroached the plot in question. The complainant immediately came back to Karachi and found that Matidad, Walidad and four other persons and three ladies are in possession. Farooqdad and Sahibzada also came on the site and issued threats and also demanded bhatta of Rs.500,000/= in lieu of plot. Investigation was carried out by the Investigating Officer and the charge sheet was submitted on 15-03-2016 in which it is disclosed that after recording the statement of witnesses and interrogation, the offence under Section 448/

380/ 34 was found to have been committed and the other offences under Section 383/ 384/ 427 /109 PPC could not be established therefore the recommendation was made to submit challan under Section 448/ 380 /34 PPC while against the absconder the proceedings under Section 512 Cr.P.C were recommended. However; 164 Cr.P.C statement of the complainant was recorded on 11-03-2016 in which he affirmed his earlier statement including the allegation of bhatta therefore Investigating Officer finally submitted the challan under Section 448, 380, 383, 384, 427, 109 and Section 34 PPC in view of the statement of the complainant recorded Section 162 and 164 Cr.P.C.

**3.** The learned counsel for the applicants argued that according to the complainant the offence was committed on 02-01-2016 while the FIR was lodged on 03.02.2016. No plausible explanation has been given for this inordinate delay. Secondly he referred to the agreement of tenancy. He further argued that the applicants have been falsely implicated in the case. He also referred to page 115 which is an agreement to sell for the same plot executed on 05.03.2010 between Rahimzada and Sahibzada who are real brothers and this plot was purchased by Sahibzada and he also referred to a suit for Specific Performance of Contract which is pending in the Court of 1<sup>st</sup>.Senior Civil Judge, Karachi East between Sahibzada, Rahimzada, Muhammad Riyaz (present complainant) and Karachi Development Authority in relation to the same property. He further argued that it is a matter of two versions, initially the Investigation Officer did not find out any evidence of bhatta but subsequently on the basis of 162, 164 Cr.P.C statement the Investigation Officer has submitted the challan including the charge of bhatta.

**4.** The learned APG argued that during investigation no evidence was collected regarding the bhatta; he further argued that the complainant submitted that the applicants visited the house and issued the threats and also demanded bhatta but in support of these allegations no witness was produced before the Investigation Officer; he further submitted that according to the material available on record a civil dispute has been converted into criminal dispute and the suit for Specific Performance is also pending therefore he has no objection to the grant of bail.

**5.** The copy of sale agreement executed in the Year 2010 is also on the record and for the same plot a civil suit is also pending. Nowhere it is

stated by the complainant that he has paid any bhatta to any person. No witness has been cited in whose presence the bhatta was demanded nor any such amount was paid. The incident was committed on 02.01.2016 while the FIR was lodged on 03-02-2016 without explaining any delay. All these crucial facts require further inquiry which can only be proved during the trial. No complaint under the provisions of Illegal Dispossession Act is pending between the parties and according to charge sheet the case is of two versions.

6. As a result of above discussion, the applicants are granted bail subject to furnishing solvent surety in the sum of Rs.100,000 (Rupees One Lac) each with P.R. Bond in the like amount to the satisfaction of the learned trial Court. The above findings are tentative in nature and shall not prejudice the case of either party.

The criminal bail application stand disposed of.

**JUDGE**

**JUDGE**

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