

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.593 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

28.09.2021

Mr. Siraj Ahmed Mangi, Advocate along with Applicant (on bail).
Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Muhammad Murtaza Torabi seeks his admission on pre-arrest bail in Crime No.52/2021 of Police Station Aziz Bhatti, Karachi, under Section 420/406/34 PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 05.04.2021, hence this bail application.

Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with Court file, therefore, there is no need to reproduce the same.

Complainant, despite of notice, has chosen to remain absent without intimation.

Learned counsel for the applicant submits that the FIR is delayed for about three years and no plausible explanation has been furnished by the prosecution for such an inordinate delay. Next submits that the sections applied in the FIR are bailable except section 406 PPC which carries maximum punishment up to seven years, hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C. He further points out that case has been challaned and the main accused Yaqoob Shahbaz, against whom, the allegation of selling plot, is assigned, has been let off by the police, therefore, case against applicant requires further inquiry.

Learned Addl. P.G, Sindh appearing for the State, in view of above statement made at the bar and after going through the challan, admits that main accused Yaqoob Shahbaz has been let off, therefore, he has no objection for grant of the application.

Heard arguments and perused record. Admittedly, the incident as per FIR, is said to have taken place on 25.07.2017 whereas, report thereof was lodged on 28.01.2021 i.e. with delay of about three years though the distance between P.S and place of occurrence is two kilometers; however, no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution. Moreover, co-accused Yaqoob Shahbaz has been let off and the applicant being State Agent is a middle man and has committed no fraud; however, pay order for amounting to Rs.12,50,000/- issued by the complainant was given to applicant, who subsequently handed over / transferred funds in the account of co-accused Yaqoob Shahbaz, the Builder. The case has been challaned, therefore, applicant is no more required for the purpose of investigation or interrogation. In view of above, case against applicant requires further inquiry within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Muhammad Murtaza Torabi son of Muhammad Hassan Torabi** on 08.04.2021 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE