

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.235 of 2021

Date

Order with signature of Judge

Shaikh Muhammad Ayoub Vs. The State

Mr. Sayeed Jamil, Advocate for the Applicant a/w applicant on bail.

Mr. Siraj Ali Khan Chandio, Addl. Prosecutor General, Sindh

Ms. Samina Malik, Advocate for the Complainant a/w complainant.

Date of hearing : 14th October, 2021

Date of Order : 14th October, 2021

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Sheikh Muhammad Ayoub seeks his admission on pre-arrest bail in Crime No.162/2020 of Police Station Nazimabad, Karachi, under Section 109/486-F/420/468/471/34PPC. Accused preferred Bail Application No.1021/2020 before the Court of Sessions, which subsequently was assigned to 5th Additional Sessions Judge, Karachi (Central), where after hearing parties, his request was turned down by means of order dated 15.12.2020; hence, he has maintained instant bail application.

2. 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.

3. At the very outset, learned counsel for the applicant submitted true copies of case diaries in respect of Execution Application No.01/2019 (re-the State Versus Naveed Arif) arisen out of Civil Suit No.990/2015 filed by the complainant and other relevant documents, which were taken on record.

4. Learned counsel for the applicant submitted that applicant is ready to handover the possession of flat in dispute in favour of the complainant; however, complainant is avoiding to take possession of the flat bearing No.B-3, 3rd Floor, Gul Heights, situated at piece of land bearing plot No.D-5 Block-5, near Khilafat Chowk, Nazimabad, Karachi, admeasuring 700 Sq. ft. He further submitted that after furnishing surety before this Court, applicant had

been appearing before the trial Court, therefore, case against him requires further inquiry as the applicant has not misused concession extended to him by this Court.

5. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposed the bail application on the ground that huge amount was usurped by the applicant/accused as the cheque in question was given by the applicant to the complainant before Executing Court/Senior Civil Judge-VII, Karachi (Central). In pursuance of writ of possession issued by the Executing Court, applicant appeared before Executing Court and undertook through his statement dated 09.03.2020 by mentioning that he (the accused) is ready to pay Rs.24,00,000/- (Rupees Twenty Four Lacs) to the complainant and issued two cheques viz. cheque No.CDA-24862035 amounting to Rs.18 lacs and cheque No.CDA-24863036 amounting to Rs.6 lacs, to be drawn at Soneri Bank, Gul Market Branch. On presentation, complainant was apprised by the Bank concerned that account for which cheques were issued by the applicant was closed one, therefore, cheques were bounced; hence, applicant has not only cheated with the complainant but has repeated crime, therefore, is not entitled for concession of anticipatory bail.

6. On the other hand, learned counsel for the complainant, by adopting arguments advanced by learned Addl. P.G, Sindh, also opposed the bail application and further submitted that applicant and his counsel remained absent before the Court of Additional Sessions Judge-V, Karachi (Central) where his bail application bearing No.1021/2020 was pending and fixed for confirmation or otherwise. Learned counsel further argued that applicant is a habitual offender and has much influence over the local administration, therefore, always used to issue threats to the complainant to withdraw from the case else he will be taken to task. Next submitted, on each and every date accused made statement to the effect he (accused) is ready to handover the possession; however, on adjournment of the case again refuses to give possession of the flat in question. Hence, he is the man of no good character; besides is not reliable.

7. **Heard arguments and record perused.**

8. Admittedly, the complainant being low-paid employee entered into an agreement with the accused on 14.04.2013 thereby purchased a flat bearing No.D-5 Block-5, near Khilafat Chowk, Nazimabad, Karachi, which later was refused from its possession, therefore, filed Civil Suit No.990/2015 before the Court of Senior Civil Judge-VII, Karachi (Central) which ultimately was decreed as prayed vide judgment and decree dated 05.11.2018 and 08.11.2018 respectively. Later, complainant filed Execution Application No.01/2019, which, after issuance of process as well as completion of formalities and in order to satisfy the decree, the learned trial Court/Executing Court had issued writ of possession. Meanwhile, accused Shaikh Muhammad Ayoub appeared before the Executing Court along with his counsel on 09.03.2020 where he gave two cheques bearing No.CDA-24862035 and CDA-24863036. Out of said cheques, cheque No. CDA-24862035 amounting to Rs.18 lacs was deposited by the complainant in his account and on presentation he was informed by the Bank that account for which cheque was issued, was non-operative and was closed, therefore, cheque presented by the complainant was bounced and was returned to him with memo. Therefore, complainant got registered instant case. It is admitted position of record that applicant filed Criminal Bail Application No.1021/2020, before the Court of Sessions wherefrom it was assigned to the Court of 5th Additional Sessions Judge, Karachi (Central) where accused and his counsel were called not in attendance and after hearing counsel for the complainant, as well as the State, bail application was dismissed on 15.12.2020, even then applicant remained fugitive from the law for about two months and when coercive process was ordered by the trial Court, he rushed before this Court and filed this bail application on 08.02.2021. The conduct of the applicant shows he is not a person of good reputation rather is a criminal minded, having wrong intentions, therefore, has committed fraud with the complainant thereby has deprived him of his valuable investment.

9. It is settled principle of law that bail cannot be claimed as of right in non-bailable offence and present offence is also a non-bailable one; besides, applicant has deprived the complainant of his valuable investment by keeping him on false hopes for about six years. The applicant not only has cheated the complainant but also has defeated the Executing Court where he by way of his statement made himself ready to pay the amount in question to

the complainant by issuing dishonoured cheques, which resulted into crime after crime. Therefore, it appears that applicant is habitual offender and in case he is admitted on bail in fact he will cheat others. Moreover, no malafide or any animosity has been brought on record against the complainant or the prosecution, which is prime ingredient for grant of pre-arrest bail. Hence, basic ingredients for seeking pre-arrest bail are lacking in the case, therefore, he is not entitled for extra-ordinary relief. Reliance can be placed upon cases of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)* and *RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129)*.

10. It is also well settled principle of law that Court has to observe tentative assessment while deciding bail application and taking tentative assessment of the available record, I am of the opinion that applicant, prima facie, was found to be involved specifically in this case, as such applicant is not entitled for the extraordinary relief/concession in shape of pre-arrest bail. Consequently, instant bail application was dismissed. Interim granted earlier to applicant on 08.02.2021 was also recalled.

11. Since the case has been challaned and looking to the conduct of the applicant, who remained fugitive from the law for certain period, was taken into custody and remanded to jail with directions to jail authorities to produce him before the trial Court as and when he may be summoned by the trial Court.

12. Above are the reasons for the short order dated 14.10.2021.

JUDGE