ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Bail Application No. 744 of 2008

Date	Order with signature of Judge

1. FOR ORDERS ON M.A.NO.2680/2008.
2. FOR HEARING.

01/06/2009.

Mr. Raza Hashmi, Advocate for applicant along with applicant.

Mr. Asadullah Balouch, State counsel.

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1. Granted subject to all just exceptions.

2. The applicant has been implicated in FIR No. 27 of 2008 registered at Police Station Gulberg Karachi, in offence under section 420/468/471/506-B PPC. It appears from the FIR that some transaction between the complainant and the applicant has taken place regarding land on 29.9.2005 in respect of which certain payments were made by the complainant to the applicant and co-accused Muhammad Naseem. As the transaction turned out to be false, the FIR as noted above was lodged.

The applicant had made an application for grant of pre-arrest bail in the court of 1st Additional District & Sessions Judge, Karachi-Central. Initially interim bail was granted to the applicant but subsequently, on 30.5.2008 such order was recalled and bail application was rejected for the reason that the applicant and his counsel remained absent from court. The applicant then approached this court for grant of pre-arrest bail to him. Through order dated 30.6.2008, interim pre-arrest bail was granted to applicant on his furnishing surety in the sum of Rs. 200,000/- and P.R. in the like amount to the satisfaction of the Nazir of this court. On 05.4.2009, applicant appeared before the Court but his counsel was not present, when an order was passed whereby interim pre-arrest bail granted to the applicant was recalled and matter was adjourned to 18.5.2009. On 18.5.2009, Mr. Raza Hashmi, Advocate filed his Vakalatnama on behalf of applicant and sought adjournment, pursuant to which the matter was adjourned for today.

Mr. Raza Hashmi, learned counsel for the applicant has contend that the FIR has been lodged with a delay of almost about three years, there are civil suits pending between the parties in respect of same issue as alleged in the FIR, the applicant has all along cooperated in the investigation and now challan has been filed, charge framed and trial

has commenced and that co-accused Muhammad Naseem has been granted bail by learned 10th Civil Judge and Judicial Magistrate, Karachi-Central through order dated 22.5.2008. Learned counsel further contends that the interim pre-arrest bail was recalled on 05.4.2009 for mere reason that applicant's counsel namely Mr. Nawab Mirza, Advocate was not in attendance. Learned counsel for the applicant has further contended that the offence under section 420, 471 and 506-B PPC are bailable while offence under section 468 PPC is a non-cognizable offence. In support of his submissions he has relied upon the case of TARIQ BASHIR & 5 OTHERS V/S THE STATE (PLD 1995 SC 34), MARRIAM ANTHONY NAROHANA & ANOTHER V/S THE STATE (2006 P.Cr.L.J. 1793) and MST.SHEZAN SANAULLAH V/S THE STATE (2006 P.Cr.L.J.522).

Learned counsel appearing for the State has opposed the granting of pre-arrest bail application on the ground that the ingredients attracted for grant of pre-arrest bail are not applicable to the case in hand and that the co-accused Muhammad Naseem was granted post arrest bail.

I have considered the submissions made by learned counsel for the applicant and that of the State.

On the very face of reading of the FIR, it appears that the transaction alleged between the parties seems to have been taken place on 29.9.2005, the complaint of which was lodged on 30.1.2008. There is apparently a delay of 2 years and 4 months in lodging of complaint for which there does not seem to any ready explanation nor any has been shown by the learned State counsel. Besides there are two Civil Suits pending between the complainant and applicant one being Suit No.156 of 2008 in the court of Vth Civil Judge, Karachi-East and the other being Civil Suit No.736 of 2008 in the High Court of Sindh at Karachi on the same subject as alleged in the FIR. Co-accused Muhammad Naseem has already been granted bail by the trial court. It is not disputed that the challan has already been filed, charge has been framed and the matter is at the stage of trial. Out of 4 sections, which have been applied against the applicant, 3 are bailable and section 468 Cr.P.C. which carries maximum punishment of seven years in view of the fact that after the investigation, the prosecution has submitted challan and trial court has already framed charge and the matter is at the stage of trial, the question of committing forgery for the purpose of committing cheating becomes a matter of further enquiry as apparently all material on the basis of which charge has been framed under this provision seem to be available before the trial court.

Though the ingredients of pre-arrest bail as propounded by the learned State Counsel may not be attracted to the present case but the court apparently is not devoid from considering the pre-arrest bail application on its merits if a case for grant of bail is otherwise made out. It will not be a case where the applicant is allowed to be arrested and then after arrest bail is extended to him. Such an exercise as a rule perhaps may not be necessary in every case. Where the applicant, who had approached the court for grant of pre-arrest bail and it was granted on the ground of further enquiry, the Hon'ble Supreme Court maintained the same in the case of GHULAM MOHI-UD-DIN SHAH V/S HAFIZ MUHAMMAD RAMZAN & OTHERS (2007 SCMR 1931)

For the foregoing reasons this pre-arrest bail application is allowed on applicant's furnishing surety in the sum of Rs.200,000/- and P.R.Bond in the like amount to the satisfaction of the Nazir of this Court.

It is stated by learned counsel for the applicant that such surety and P.R.Bond has already been furnished by applicant when he was granted interim pre-arrest bail vide order dated 30.6.2008. Such surety and P.R.Bond if intact to remain in force.

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