

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Cr. Bail Application Nos. 383 & 384 of 2021

Applicants : Through Zia ul Haq Makhdoom,
Azhar Mahmood and Hira,
Advocates

The State : Through, Talib Ali Memon, APG.

The Complainant : Through Abdul Nabi Joyo,
Advocate

Date of Hearing : 05.04.2021

ORDER

YOUSUF ALI SAYEED, J. - The Applicants, Faisal Yousuf, Muhammad Hanif and Muhammad Yaqoob have invoked the jurisdiction of this Court under Section 498, 498-A, Cr. P.C through the captioned Applications seeking bail before arrest in respect of FIR No.69 of 2021 registered at P.S Shakra-e-Faisal, Karachi (East) on 26.01.2021 at 03.00 p.m under Sections 420, 406, 506, 34 of PPC (the “**FIR**”) at the behest of Syed Muhammad Osaf Kashif (the “**Complainant**”), with ad-interim pre-arrest bail having been granted to them in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) each vide order dated 04.03.2021, with a P.R Bond in the like amount to also be executed to the satisfaction of Nazir of this Court.

2. Proceeding with his arguments in support of confirmation, learned counsel submitted that one of the Applicants, namely Faisal Yousuf, was a builder, carrying on business under the name of Goldline Properties, whereas the others were his employees. He invited attention to the contents of the FIR, pointing out that the underlying dispute essentially pertained to the booking of an apartment bearing Flat No.C-610, 6th Floor, Type-C, Block-2 in Gold Line Residency Block-16-A, Gulistan-e-Johar Karachi (the “**Unit**”) in the name of the Complainant’s mother, namely Mst. Shamim

Akhtar, with the insertion of S. 406 and 420 PPC being predicated on the allegation that possession of the Unit had been withheld despite the lapse of a period of 10 years and a sum of Rs.22,40,000/- having been paid against the total value of Rs.42,00,000/-, during which time they had been kept on false hope of possession, and it also being contended by the Complainant that the matter eventually came to a head on 16.01.2021 when he visited the office of Builder at around 6.00 pm, only to be informed that the booking had been cancelled, and on his protestation, threats were extended by the Builder's employees, namely Maqsood and Hanif, hence S.506.

3. Learned counsel for the Applicants contended that the matter was essentially a civil dispute, and in the event of there being a genuine grievance in relation to non-delivery of the Unit, the appropriate remedy available to the Complainant/booker was to file Suit seeking specific performance of the underlying agreement, but such a step had not been taken to date. Instead, the Complainant had sought to convert into a criminal case so as to harass and intimidate the Applicants. He submitted that in cancelling the Booking, the Builder had acted in conformity with the terms of the underlying contract, which provided that in the event of payment not being made in a timely manner, the Builder could exercise the right of cancellation, which is what had been done in the instant case with due notice to the counter party. He invited attention to Conditions No. 2, which reads as follows:-

“1. The applicant shall pay all the installments as per schedule agreed.”

“3. The possession and ownership of the unit shall remain with the company until full payment including services charges for utilities and documentation etc, made by the applicant.”

“6. In case of failure on the part of applicant, to make payments within the prescribed period or after 7 days of FINAL NOTICE, the allocation/allotment will stand cancelled, the amount deposited by the applicant shall be refunded 12 months after the completion of this project. Subject to rebooking of the unit an amount equal to 10% of the total cost of the unit agreed will be deduced from the refundable amount.”

“7. In case an applicant subsequently wishes to surrender his/her unit or it stands cancelled on the basis of clause (6) above the amount will be refunded after completion of this project and deduction of 10% of the total agreed price of the unit will be made from the installment deposited by the applicant, being the service & establishment charge.”

4. He also invited attention to a Statement filed on 18.03.2021, under cover of which copies of the demand notices and cancellation notices said to have been issued on the subject were placed on record. It was also pointed out that the Complainant had failed to disclose that the issue had earlier been agitated before the Sindh Building Control Authority as well as the Association of Builders and Developers; that there was even otherwise no allegation as to the Builder himself having even been present on the scene on 16.01.2021; and that there was an unexplained delay of 10 days between that date and registration of the FIR. As such, it was argued that the entire parcel of allegations advanced through the FIR were demonstrably false and malicious, with it being prayed that bail be confirmed.
5. In response, counsel for the complainant denied receipt of the demand and cancellation notices, submitting that the same had been fabricated. However on query posed, he conceded that no civil proceeding for enforcement of contractual rights had been instituted to date, but went on to state that the same would be done shortly. For his part, the learned APG formally opposed the Applications, but stated that the investigation had been concluded, with the final challan having been submitted.
6. Having considered the arguments advanced in light of the material on record, it transpires that under the given circumstances the matter is apparently one that requires further enquiry and at present the aspect of mala fide on the part of the Complainant also cannot conclusively be

ruled out. Needless to say, an authoritative determination of the matter would only be possible following proper appraisal of the evidence, which is neither possible nor desirable at this stage, when only a tentative assessment is to be made. However, at present, a case for grant of pre-arrest stands made out, and it for that reason that the interim bail granted to the Applicants earlier was confirmed vide a short Order made in Court upon culmination of the hearing on 05.04.2021, with both the Applications standing disposed of accordingly.

JUDGE

TariqAli/PA