

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.320 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

29.09.2021

Mr. Muhabat Ali, Advocate along with Applicant (on bail).
Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh along with SIP
Daud Ahmed of P.S Eidgah, Karachi.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Sunil seeks his admission on pre-arrest bail in Crime No.32/2021 of Police Station Eidgah, Karachi, under Section 506/337-A(i)(iv) PPC. The case has been challaned by the police, which is now pending for trial before the Court of Judicial Magistrate-XXII, Karachi (South) vide Criminal Bail Application No.1572/2021 (re-the State Versus Sunil). The bail plea preferred by the applicant before first forum was declined by means of order dated 08.02.2021, hence this 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. The process issued against Complainant returned duly served, taken on record. Complainant Mohan is present in person.

4. Learned counsel for the applicant submits that the complainant borrowed amount of Rs.100,000/- from accused for three months' time and after expiry of stipulated period, he refused to pay the same and on demand made by the accused, he made quarrel and later got registered instant case against him so that he may not claim amount borrowed by the complainant. He further submits that FIR is delayed for about eight days for which there is no plausible explanation; besides, trial has commenced. In support of his

contention, he submits copies of depositions of Complainant Mohan as PW-1 at Ex.3, PW-2 Paro at Ex.4, PW-3 Ratan at Ex.5 and PW-4 Vanash at Ex.6, under the cover of his statement dated 29.09.2021, same are hereby take on record. Hence, submits that applicant has not misused the concession extended to him and any adverse order, at this juncture, may prejudice his case. He, therefore, submits that by granting instant application, bail granted to the applicant may be confirmed; besides directions may also be issued to trial Court to decide the case as early as possible.

5. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application; however, admits that applicant, at the time of alleged incident as shown under the FIR, was empty handed and had used no weapon through which it could be deduced that he caused such an injury to injured complainant.

6. Complainant Mohan, present in person, submits that amount borrowed by him as per agreement, was to be paid by him to the accused in installments; however, he (accused) threatened him to return in lump sum.

7. **Heard arguments and perused record.** Admittedly, the incident as per FIR, is said to have taken place on 12.01.2021 whereas, report thereof was lodged on 20.01.2021 i.e. with delay of about eight days though the distance between P.S and place of occurrence is 1.5 kilometer; however, no plausible explanation has been furnished by the prosecution for such an inordinate delay. The case has been challaned where material witnesses have been examined, therefore, submission made by learned counsel for the applicant to the effect that case has been proceeded and any adverse order may prejudice case of applicant, carries weight. Moreover, the case is being tried by the Court of Judicial Magistrate where after recording evidence of the parties, if prosecution may succeed to prove its charge against accused even then punishment of more than three years cannot be visualized. In the circumstances and in view of grudge with complainant on account of money transaction, basic ingredients for grant of pre-arrest bail as enshrined by the Hon'ble Supreme Court of Pakistan in its numerous Judgments are fully attracted. Reliance in this respect can be placed upon the case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*.

8. In the circumstances and 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 **Sunil son of Ramesh** on 08.02.2021 is hereby confirmed on same terms and conditions.

9. 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.

10. 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 tamper 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.P.C. 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

Zulfiqar/P.A