

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

Cr. B.A. No.S-493 of 2022

1. For order on office objection.
2. For hearing.

16.05.2022

Mr. Muhammad Nadeem Khan alongwith Syed Jameel Anwar Jaffri, Advocate for the applicant.

Ms. Rameshan Oad, A.P.G.

Mr. Muhammad Parial Lara Advocate files Vakalatnama on behalf of the complainant, who is also present in Court.

**ORDER**

**SALAHUDDIN PANHWAR, J.**-Through instant bail application, applicant Muhammad Yousuf seeks post-arrest bail in crime No.30 of 2022, registered at Police Station B-Section Nawabshah, under sections 420, 406, 506-B and 34 PPC. Earlier the bail plea raised on behalf of the applicant was declined by the learned 2<sup>nd</sup> Additional Sessions Judge, Shaheed Benazirabad vide his order dated 09.04.2022.

2. As per contents of the FIR, under the garb of business of sale and purchase of the cars, he has deposited an amount of Rs.30,00,000/- in the accounts of accused/applicant Muhammad Yousuf and his wife Mst. Shahida Yousuf; however, after sometime they have committed fraud with him and misappropriated the said amount on the pretext of loss occurred in the said business.

3. Learned counsel for the applicant contends that applicant is innocent and has falsely been implicated in the case; that there is delay

of two days in lodgment of the FIR, which has not been explained by the prosecution; that there is no agreement between the parties in respect of the alleged business transaction; that the matter is purely of civil nature; that the alleged offence does not fall within prohibitory clause, hence it requires further probe. Lastly, he prays for grant of bail to applicant.

4. On the other hand, learned A.P.G as well as the learned counsel for the complainant opposed the bail application.

5. Heard learned counsel for the respective parties and perused the record. Admittedly, the complainant and the accused/applicant (who is in custody) were having business transaction of sale and purchase of cars. Accordingly to the complainant, he transferred Rs.30,00,000/- in the bank account of applicant as well as his wife. Section 420 PPC is bailable. As regard the section 406 PPC, applicability of the same between private persons is yet to be determined by the trial Court; whereas the maximum punishment for the same as provided under the statute is 03 years, which is not falling within prohibitory clause of section 497 Cr.P.C. In view of the dictum laid down in the case of **Tariq Bashir and 5 others V The State** (PLD 1995 Supreme Court 34), grant of bail in an offence not falling within prohibitory clause of section 497 Cr.P.C, is a rule and its refusal is an exception. No exceptional circumstance has been agitated by the prosecution and/or the learned counsel for the complainant. Further, the FIR is delayed for 02 days; the case has been challaned and now is pending adjudication hence applicant is not required for any investigation purpose. Further, the applicant is resident of Karachi whereas the complainant is resident of

Shaheed Benazirabad; hence there is no likelihood that applicant will tamper the prosecution evidence in case he is enlarged on bail.

6. In view of the above, the applicant has been able to prove his case for grant of bail. Accordingly, the application is allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and P.R Bond in the like amount to the satisfaction of the trial Court.

JUDGE

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