

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 2255 of 2021

Applicant : Mst. Asma Rafiq Bawani w/o Muhammad Rafiq Iqbal Bawani, through Mr. Muhammad Ajmal Solangi, advocate

Respondent : The State, through Mr. Chaudhry Waseem Akhtar, Assistant Attorney General.

Date of hearing : 02.03.2022

Date of order : 02.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Mst. Asma Rafiq Bawani w/o Muhammad Rafiq Iqbal Bawani seeks pre-arrest bail in Crime No. 134 of 2021, registered under Section 420/406, P.P.C. at P.S. F.I.A. A.H.T., Circle, Karachi. Her earlier bail application for the same relief bearing No. 5933 of 2021 was heard and dismissed by the learned IVth Additional Sessions Judge, Karachi-East vide order, dated 23.11.2021. She was admitted to interim pre-arrest bail by this Court vide order, dated 25.11.2021, now the matter is fixed for confirmation of interim bail or otherwise.

2. It is alleged that in the year 2015, co-accused Muhammad Rafiq Iqbal Bawani/ the husband of the applicant and the applicant, who are directors of M/s. Career Link Development ("**CLD**"), received Rs. 400,000/- from complainant Muhammad Masood Khan and Rs. 4,58,000/- from his friend Muhammad Ismail Bux through cash and banking channel for sending them to Ireland for study purpose, but they failed to do so and even they did not return the amount to them. The accused persons were entrusted with said amount for arranging admissions of the complainant and his friend in Ireland, but they dishonestly utilized the said amount in their own personal use, for that they were booked in the aforesaid F.I.R.

3. Learned counsel for the applicant has contended that the applicant is innocent and has nothing to do with the alleged offence, who has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives in order to harass and

humiliate her; that the alleged offence does not fall within prohibitory clause of Section 497, Cr, P.C.; therefore, the applicant is entitled for the grant of bail.

4. On the other hand, learned Assistant Attorney General has opposed the grant of pre-arrest bail to applicant on the ground that she along with her husband is nominated in the F.I.R. with specific role of receiving alleged amount to arrange admissions for complainant and his friend in Ireland and she as well as her husband failed to return them their amount; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, she is not entitled for the concession of bail.

5. I have heard learned counsel for the parties and perused the material available on record with their assistance.

6. It appears that in response to an advertisement published in the Daily Jang, the complainant and his said friend visited the office of CLD and met with said co-accused and applicant, who apprised them that they send students abroad for study purpose. The complainant and his friend showed their desire to study in Ireland, on that accused persons demanded 4,000/- Euros for each. The complainant paid them Pak. Rs.300,000/- through a Cheque, dated 01.08.2015, and Rs.100,000/- in cash, while the said friend of the complainant paid them Rs.4,58,000/- and they both entered into a contract agreement with the co-accused on 06.08.2015. It further appears that the compliant and his said friend provided relevant documents to said co-accused, who provided them copy of Admission / offer letter of Advance International College of Ireland, but the Embassy of Ireland, vide letter dated 15.02.2016, refused the application of the complainant for an Irish Visa for the reasons disclosed in the said letter. It is; however, an admitted position that the CLD deposited the tuition fee, including accommodation, of the complainant with Advance International College, Ireland; hence, neither the applicant has retained the amount so paid by the applicant nor she utilized the same for her personal use. Under such circumstances, it is yet to be determined at trial if there is any element of cheating and/or criminal breach of trust on the part of applicant. Moreover, alleged offences do not fall within the prohibitory clause of section 497, Cr.P.C. and it is now salutary principle

of law that in the offences which do not fall within prohibitory clause, the grant of bail is a rule while its refusal is merely an exception.

7. For the foregoing facts and reasons, the interim bail granted to the applicant vide order, dated 25.11.2021 is confirmed on the same terms and conditions.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving her notice in accordance with law.

9. Above are the reasons of my short order, dated 02.03.2022, whereby the interim bail granted to applicant was confirmed.

JUDGE

Athar Zai