

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 647 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

22nd December, 2021

Mr. Muhammad Mohsin Khan, Advocate a/w applicant.
Mr. Abrar Ali Khichi, Addl.P.G.

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Omar Sial, J: Faizan Ahmed has sought pre-arrest bail in crime number 547 of 2020 registered under section 408 and 420 P.P.C. at the Darakhshan police station. Earlier, his application seeking bail was dismissed by the learned 3rd Additional Sessions Judge, Karachi South on 8-4-2021.

2. A background to the case is that the aforementioned F.I.R. was lodged on 3-11-2020 upon the complaint of Mohsin Aijaz. Aijaz recorded that he had employed the applicant in his office on 3-3-2019 and that a part of his duties was to deposit cash received from various sources into the company account. Faizan did not deposit all the money and there was a shortage of Rs. 2 million. Faizan then left the job in September 2020.

3. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General. Several opportunities were given to the complainant to appear but he did not effect an appearance. My observations and findings are as follows.

4. The learned counsel for the applicant has argued that the applicant was not an employee of the complainant but that he was an independent contractor and that the present case has been filed solely due to malafide that originates from the business dealings between the two individuals. The learned Additional Prosecutor General confirmed that at the moment there is no evidence of employment on record. There also appear no receipts or accounts available on the police file that would support the complainant's contention. Apart from the complainant's allegation contained in the F.I.R. it prima facie appears that there is no other evidence on record. The case diaries of the learned trial court also

appear to reveal that prosecution witnesses are not appearing in the case since April 2021. Malafide on the part of the complainant, upon a tentative assessment cannot be conclusively ruled out at this preliminary stage.

5. The applicant is accused of offences under section 420 and 408 P.P.C. Section 420 P.P.C. is a bailable offence whereas section 408 comes into play when a servant or clerk commits a criminal breach of trust. In the absence of any evidence even prima facie showing that the applicant was an employee of the complainant, this is an aspect that can only be decided by the learned trial court after it has had the benefit of analyzing the evidence produced at trial.

6. Above are the reasons for the short order dated 3-12-2021.

JUDGE