

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 2264 of 2022

For hearing of Bail Application.

Applicant/Accused : Syed Saeed Raza Zaidi son of Syed Saghir Raza Zaid, in person.

Complainant : Syed Mujtaba Hussain son of Syed Akhlaq Hussain Jafri, through Mr. Umer Farooq Khan, Advocate.

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Date of hearing : 20-03-2023

Date of order : 20-03-2023

FIR No.792/2022
U/s: 489-F PPC
P.S. Feroz Abad, Karachi.

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/Accused seeks pre-arrest bail after his application for the same has been declined by the Additional Sessions Judge *vide* order dated 17-11-2022.

2. Apparently, the parties had entered into an agreement for the sale of an immovable property where under the Complainant was the seller and the Applicant/Accused was the buyer. A copy of the sale agreement is placed on the record by the Applicant. Under such agreement, the Applicant made Rs.60,00,000/- as down-payment, out of which Rs.10,00,000/- was given by way of the cheque in question which was dishonoured on presentation.

3. The Applicant submits that under the sale agreement the Complainant was under an obligation to pay-off encumbrances / charges outstanding with regards to the property; that he failed to do so, and therefore the transaction failed; whereafter a sum of Rs. 45,00,000/- continues to be retained by the Complaint along with the property and its documents and the FIR was lodged with malafides so that the Applicant dos not demand the return of Rs. 45,00,000/-.

4. The sale agreement and along with it the receipt of a certain amount as down-payment from the Applicant is not denied by the Complainant, rather it is acknowledged in the FIR. That agreement does go on to recite that certain charges are outstanding in respect of the property which are the liability of the Complainant. Now whether the cheque was conditioned on the performance of such obligation, as alleged by the Applicant, remains a question of fact that has yet to be tried. In the meantime, it is not denied by learned counsel for the Complainant that possession of the property, its documents and a certain down-payment are with the Complainant, *albeit* it is contended that possession of the property has only recently been retrieved from the Applicant. Therefore, the submission of the Applicant that the FIR was lodged so that the Applicant foregoes the down-payment, cannot be ruled out at this stage. The fact that the cheque in question was dishonored on 12-04-2022 whereas the FIR was lodged on 17-10-2022, after six [06] months, also goes to support the case of the Applicant.

5. In the aforesaid circumstances, the contention of the Applicant that the FIR was lodged with malafides is not without force. Resultantly, he has made out a case for pre-arrest bail. His bail is confirmed subject to furnishing solvent surety in the sum of **Rs. 200,000/- [Rupees Two Hundred Thousand Only]** alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court. The Applicant shall continue to attend the trial Court failing which such concession may be withdrawn.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

SHABAN*

JUDGE