

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

B.A No.1494 of 2023

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| Date | Order with signature of Judge |
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For hearing of bail application.

25.07.2023

Mr. Shahriyar Ibrahim Soho, advocate for the applicants along with applicants.

Mr. Tariq Hussain Arain, advocate for the complainant.

Ms. Rubina Qadir, DPG.

The applicants have been booked in FIR No.88/2023 under Section 448, 452, 380, and 34 PPC at Police Station Freer. Their bail plea has been rejected by the learned VII Additional Sessions Judge, Karachi South vide order dated 07.07.2023 on the ground that the case of the applicants does not fall within the ambit of further inquiry as they participated in the commission of alleged offences.

2. Applicants being aggrieved by and dissatisfied with the aforesaid order approached this Court on 11.07.2023 by filing a pre-arrest bail application under Section 498 Cr. P.C inter-alia on the ground that they are innocent and have nothing to do with the alleged crime and have been falsely implicated by the complainant in connivance with the police with malafide intention and ulterior motives; that there is a delay of 14 days in registration of the FIR; that the applicant No.1 is the bonafide owner of the property in question and the complainant is just usurper of his property besides all the title documents are lying with the applicant No.1; that offense under Section 448, 452 are not attracted, however, the police is hunting the applicants just to cause their humiliation and disgrace to compel them to bow before the complainant to withdraw from the claim of the subject property and this is the technique which they have used to deprive the applicant of such ownership of the property. He next argued that no alleged trace pass has taken place and the case of the applicant is based on malafide intention of the complainant. He prayed for confirmation of the bail already granted by this Court vide order dated 11.07.2023.

3. On the other hand, learned APG assisted by learned counsel for the complainant has opposed the confirmation of the bail of the applicants on the ground that no extraordinary circumstances are available for the applicants to approach this Court as they have failed to prove malafide on the part of complainant besides the applicant No.1 also filed I.D

Complaint No.160/2023 under Sections 3 and 4 of the Illegal Dispossession Act 2005 before the Sessions Judge, Karachi South, which was dismissed vide order dated 06.03.2023. He next argued that they are the genuine occupier of the subject property which was gifted to him by the predecessor of applicant No.1, however, the applicants have no right to enter into the premises of the complainant to take away the household articles as mentioned in the charge sheet, therefore, offenses under Section 448, 452 are fully attracted in the matter as such the bail plea of the applicants has rightly been declined by the trial Court. In support of his contention, he relied upon the statement dated 25.07.2023 coupled with certain documents and prayed for the dismissal of the bail application.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. There is no cavil to the proposition that there is a distinction between pre-arrest and post-arrest bail. Pre-arrest is an extraordinary remedy while post-arrest is an ordinary remedy. Prima-facie, the record reflects that letter of administration of the property has been issued in favor of applicant No.1 by the District Judge South and the ingredients of the offense under Section 448, 452 are yet to be proved before the trial Court whether attracted or otherwise. There is no denial to the fact that the instant prosecution was lodged with inordinate delay in which the applicant has sought extraordinary relief from this Court. The delay in lodging the FIR on 02.06.2023 is yet another aspect of the case as to why the matter was taken up with the police after such a long delay when the alleged offense took place on 18.05.2023, which is one of the grounds which shows the malafide intention of the complainant to deprive the applicants of their property in question. In such circumstances, this Court can rescue the person who has alleged malafide and ulterior motive on the part of the prosecution to book him in a case that involves a civil dispute besides Section 380 has been added to the charge sheet which is another aspect of the case as to whether this Section is applicable in this case or otherwise for that the trial Court has to take pains to record evidence of the complainant positively within a reasonable time so that the matter between the parties could be thrashed out under the law.

6. The instant case only relates to Sections 452/448/380 PPC, which does not come within the ambit of bodily harm, unfortunately, the Court below has altogether ignored these aspects, which may intrude on the concept of safe administration of criminal justice.

7. For the aforesaid reasons this bail application is accepted and the interim bail granted by this Court to the applicants vide order dated 11.07.2023 is hereby confirmed on the same terms and conditions. The trial Court shall record the evidence of the complainant within one month positively and if the charge has not yet been framed the same shall be framed on the next date of hearing fixed before the trial court.

8. The observation recorded hereinabove is tentative which shall not prejudice either party at trial.

9. These are the reasons for the short order dated 25.07.2023, whereby the bail application of the applicants was accepted and confirmed.

JUDGE

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For the reasons to be recorded later on, the bail of the applicants is confirmed on the same terms and conditions.

JUDGE