

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry.

Cr. Bail Appl. Nos. 1012 To 1020 all of 2023

[Usman Maqbool (*In all Bail Applications*) vs. The State]

- Cr. Bail Appl. 1012/2023 : Usman Maqbool vs. State, FIR No. 213/2021 U/s 420, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1013/2023 : Usman Maqbool vs. State, FIR No. 218/2021 U/s 420, 406 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1014/2023 : Usman Maqbool vs. State, FIR No. 219/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1015/2023 : Usman Maqbool vs. State, FIR No. 222/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1016/2023 : Usman Maqbool vs. State, FIR No. 232/2021 U/s 420, 406 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1017/2023 : Usman Maqbool vs. State, FIR No. 233/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1018/2023 : Usman Maqbool vs. State, FIR No. 240/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1019/2023 : Usman Maqbool vs. State, FIR No. 254/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.
- Cr. Bail Appl. 1020/2023 : Usman Maqbool vs. State, FIR No. 255/2021 U/s 420, 406, 34 PPC, Registered at P.S. Gulshan-e-Iqbal, Karachi.

For the Applicant : Mr. Abbas Ali Abbasi, Advocate.
For the State : Mr. Saleem Akhtar Buriro, Additional
Prosecutor General, Sindh along with
I.O/ASI, Maqsood Ahmed, who is
present in Court.
Date of hearing : 28-08-2023
Date of order : 28-08-2023

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/Accused namely Usman Maqbool seeks pre-arrest bail in the above mentioned FIRs after the same have been declined by the X-Additional Sessions Judge, Karachi East. Since the offence alleged in all FIRs is the same *albeit* committed on different dates, and since denial of pre-arrest bail in any one of the FIRs may be *fait accompli* in the others, all of these bail applications are being decided together.

2. The Complainants are from the public who lodged FIRs on different dates in February, and one in March 2021, alleging that they were lured by advertisements of the business of Paradise Alliance (Pvt.) Ltd. **[Company]** who offered to provide vehicles on installments with delivery on down-payment, and to some, a housing loan on easy installments, but after they made a down-payment the Company neither delivered the vehicles nor extended the housing loan and thus cheating the Complainants out of their hard earned money. The FIRs nominated officers/representatives of the Company, including the Accused, for committing offences under sections 420 and 406 PPC read with section 34 PPC, excepting FIR No. 213/2021 where the offence alleged is only under section 420 PPC read with section 34 PPC.

3. In FIRs No. 213/2021, 218/2021, 219/2021, 222/2021, 240/2021, 254/2021 and 255/2021 the Complainants allege that in October and December of 2020 and January 2021 respectively, they paid various amounts as down-payment to the Company, ranging from 200,000 to

1,500,000 for booking their respective vehicles; that the Accused was the officer or one of the officers who dealt with the Complainants on behalf of the Company and who assured delivery of the vehicles in 15 to 20 days (in FIR No. 219/2021 he was implicated in the challan); but neither the vehicles were delivered nor the money refunded; that after keeping the Complainants on false hopes for some time, the Company closed down its office and vanished.

4. In FIRs No. 232/2021 and 233/2021 the Complainants allege that in January 2021 and December 2020 respectively they paid the Company Rs. 200,000 and Rs. 350,000 as down-payment for processing a housing loan; that the Accused was the officer or one of the officers who dealt with the Complainants on behalf of the Company; but no such loan was extended nor was the down-payment refunded; that after keeping the Complainants on false hopes for some time, the Company closed down its office and vanished.

5. As per the challan, the office of the Company was on rent; the rent agreement was made by one Muhammad Asif, who along with Niaz Ali Baladi and Wafa Ashfaq were the principal officers of the Company and were absconders.

6. Learned counsel for the Accused submits that the Accused was only employed by the principal officers of the Company to deal with clients; that he was unaware that they were running a scam; that no money was deposited in his personal account; that the offence under section 420 PPC is bailable; that since none of the alleged offences fall within the prohibitory clause of section 497 CrPC, the Accused is entitled to pre-arrest bail.

On the other hand, the learned APG Sindh submits that the Accused was very much part of the scam; that he was instrumental in convincing the Complainants to part with their money; that even if one of the offences is bailable and even if the offences alleged do not fall within the prohibitory clause of section 497 CrPC that is not

sufficient for pre-arrest bail when there is no *malafide* in lodging the FIRs. The learned APG Sindh also points out that despite the passage of two years, the I.O. has not taken any serious efforts to trace and arrest the principal officers of the Company; that the challan reflects an incomplete, rather shoddy investigation; and that even today the I.O. has not brought the complete police papers.

7. Heard learned counsel and perused the record.

8. The FIRs and the investigation thus far *prima facie* demonstrate that the business of the Company was a scam and that the Complainants were cheated out of their money. The Accused does not deny that he was employed by the Company at the office where the Complainants visited to make down payments either for booking vehicles or in applying for housing loans. As already narrated above, in all FIRs but one, the Accused is nominated either as the main officer or as part of a team of who dealt with the Complainants on behalf of the Company. Thus, at this stage there is no reason to disbelieve the allegation that the Accused was complicit in the offences alleged.

9. Though the offence under section 420 PPC is bailable, the offence under section 406 PPC is not. Both are cognizable offences. As pointed out by the learned APG Sindh, the interim pre-arrest bail granted to the Accused has thwarted the investigation.

10. That the offences alleged do not fall with the prohibitory clause of section 497 CrPC, or that the case against the Accused satisfies the condition in sub-section (2) of section 497 CrPC, are not the only considerations for granting pre-arrest bail.¹ It is settled law that grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations as for example to protect innocent persons against victimization through abuse of law for ulterior motives; and

¹ *Mukhtar Ahmed v. The State* (2016 SCMR 2064).

that pre-arrest bail is not to be granted as a substitute or an alternative to post-arrest bail.²

11. Learned counsel for the Accused is not able to demonstrate any *malafides* in lodging the FIRs nor that his arrest is being sought with *malafides*, which remains the primary test for the grant of pre-arrest bail.

12. For the aforesaid reasons the Accused Usman Maqbool has not made out a case for pre-arrest bail. The bail applications listed above are dismissed.

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

As regards the lethargy in investigation pointed out by the learned APG, he shall bring that to the notice of the S.P. Investigation for appropriate action.

Office is directed to place a copy of this order in the all bail applications listed above.

JUDGE

Karachi:
Dated: 28-08-2023

² *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427).