

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1586 of 2023

Criminal Bail Application No.1575 of 2023

Criminal Bail Application No.1583 of 2023

Applicants : i. Chaudhary Farooq Akbar  
in B.A. No.1586 /2022 ii. Chaudhry Basharat Hussain  
Through Mr. Muhammad Ashraf Samo  
Advocate

Applicant Ghulam Mujtaba  
in B.A. No.1575 /2022 Through Mr. Nasrullah Korai, Advocate

Applicant : Saba Nasreen  
in B.A. No.1583/2022 Through Mr. Muhammad Ashraf Samoo,  
Advocate

Complainant : Saima Noreen W/o Yasir Gul  
Through Mr. Riaz Ahmed Bhatti, Advocate  
a/w Mr. Allah Ditta Shakir, Advocate

Respondent : The State  
Through Mr. Siraj Ali Khan,  
Addl. Prosecutor General, Sindh.  
a/w SIP Zahid and Haji Khan

Date of hearing : 16.08.2023

Date of order : 16.08.2023

**ORDER**

**AMJAD ALI SAHITO, J** – By a single order, I intend to dispose of all these bail applications. Through bail application No.1586 of 2023, the applicants seek post-arrest bail, whereas, in bail applications No.1575 and 1583 of 2023, applicants seek pre-arrest bail in Crime No.1389/2022 registered under Sections 420, 468, 471, 504, 34 PPC at PS Sachal, Karachi after their bail plea has been declined by the learned Additional Sessions Judge-III, Model Criminal Trial Court-II, Malir Karachi vide order dated 17.07.2023.

2. The details and particulars of the FIR are already available in the memo of bail application and FIR, which can be gathered from the copy of FIR attached with the

applications, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant appearing in bail applications No.1583 & 1586 of 2023 contends that the applicants/accused are innocent and have falsely been implicated in this case; that no role has been assigned against the applicants; that the main accused Ali Shafqat, Sarang Mastoi and Shamim have already been granted bail by the learned trial Court; that initially the learned Judicial Magistrate had granted the bail and thereafter, cancellation for bail was filed by the complainant and after hearing the parties, the learned Additional Session Judge-III, Karachi recalled the order of the Judicial Magistrate and dismissed their bail applications; that after four months' delay, the cancellation of bail was filed, which shows malafide on the part of the complainant. He further contends that applicants Chaudhry Farooq Akbar and Chaudhry Basharat Hussain are in jail and are no more required for further investigation, as such, they may be granted post-arrest bail. He also requests for confirmation of bail for accused Saba Nasreen.

4. Learned counsel for the applicant appearing in bail application No.1575 of 2023 contends that the applicant/accused is innocent and has falsely been implicated in this case; that he being Bank Manager only facilitated the complainant; that during the discussion, the applicant came to know that the complainant is doing business of sale and purchase of the property as such he simply informed her that his colleagues are also doing the same business, as such, he just arranged a meeting of the complainant with them, otherwise, he is not a signatory of any documents nor received any amount; that no specific role has been assigned against the applicant. He lastly prays for confirmation of bail.

5. On the other hand, learned counsel for the complainant has vehemently opposed for grant of bail to the applicants

and submits that co-accused were granted bail on the basis of no objection given by the complainant as no evidence was available on record against them with the commission of the offence. He further submits that a specific role is assigned against the present applicants as accused Basharat has received most of the amounts in the shape of pay orders, cheques, and cash, whereas, accused Farooq prepared false sales agreements of the properties and accused Saba, wife of accused Basharat was also received huge amount and she remained everywhere and at every spot where they met for business purpose. In fact, accused Saba being a lady who showed herself as trustworthy and faithful and as such, induced the complainant to invest a huge amount in the said properties. Accused Ghulam Mujtaba being Bank Manager not only introduced the complainant with the other accused but also facilitated their meetings. He lastly draws attention to Section 467 PPC which punishment is more than 10 years as such they are not entitled for bail. Learned Addl. P.G. also supports the version of the complainant.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. The case of the prosecution is that the complainant is doing business of real estate; however, one day when she was in Bank for some transaction, accused Ghulam Mujtaba being Bank Manager of Allied Bank Limited, proposed her for doing business with his friends/accused, as they were also doing business of the real state. Applicant Ghulam Mujtaba arranged the meeting with the accused nominated in the FIR and informed her that they are also doing the same business and thereafter different meetings were held where accused Saba was also present. Initially, the complainant was visited at Pak Audit Society where she was asked to book a plot worth Rs. one crore saying that the worth of the same will be increased up to Rs.4 crore in four years. Thereafter, they arranged a meeting of the complainant with accused Farooq/owner of New Vision and Construction where she

invested the amount. Further, the present applicants fraudulently trapped the complainant to purchase plots, which were not registered in the names of the applicants or some of the plots were not available at the site. The complainant visited the society and plots where she came to know that such plots do not exist and files are fake and fake agreements/documents were prepared by applicant Basharat Hussain and his partner Saba Nasreen. In this way the complainant was cheated by the applicants by preparing forged and fabricated sale agreements and an amount of Rs.11 cores were grabbed by the accused, hence ingredients of Section 467 PPC are very much applicable in this case. The punishment provided for the Section 467 PPC is imprisonment for life; hence the same fall within the prohibitory clause of Section 497 Cr.P.C. When the complainant protested against the applicants for their cheating and fraud then the applicant Basharat Hussain issued a cheque No.2298856 for Rs.11 crore fifty lacs dated 08.04.2022 which was dishonored at the time of its presentation. For which, the complainant lodged a separate FIR. The applicant has not denied from his signature as well as from his cheque.

8. The complainant has specifically assigned the role against all accused persons. The role assigned against accused Ghulam Mujtaba was that he introduced the complainant with other accused and facilitated multiple meetings so also visited at the site with them and received his share amount being a broker. Secondly, the role against accused Basharat Hussain is that he received most of the amount out of 11 cores in the shape of pay orders, cheques and cash amounts invested by the complainant and accused Farooq was found involved in making false and fabricated sales documents. Whereas role assigned against the accused Saba Nasreen wife of accused Basharat Hussain is that she has also received a huge amount and remained everywhere and every spot where they met for business purposes. The

complainant present in the Court states that the applicant Saba Nasreen had given assurance that being lady assures you that all these documents are genuine. Prima facie sufficient material is available on record in the shape of documents viz. pay orders, cheques, agreements etc. to connect the applicants/accused with the commission of the alleged offence. At the bail stage, only a tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the applicants/accused, which could be the ground for false implication in this case.

9. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

10. In view of above, learned counsel for the applicants appearing in CrI. B.A. No.1586/2023 has failed to make out a case for grant of post-arrest bail. Accordingly, the same is **dismissed**. Learned counsel for the applicants appearing in bail applications No.1575 and 1583 of 2023 have also failed

to make out a case for grant of pre-arrest bail in terms of subsection 2 of Section 497 Cr.P.C., as such, these bail applications are also **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicants/accused vide orders dated 19.07.2023 passed in Crl. B.A. No.1575/2023 & 20.07.2023 in Crl. B.A. No.1583/2023 are hereby **recalled**.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

Kamran/PA

JUDGE