

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1151 of 2023

Applicant : Shahnawaz S/o Nadeem
None present.

Complainant : Altaf Khan S/o Abdul Qadir
Present in person.

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. P.G., Sindh

Date of hearing : 04.09.2023

Date of order : 04.09.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.73/2023 for the offence under Section 406 PPC registered at PS Mithadar, after his bail plea has been declined by the learned District & Sessions Judge, Karachi South vide order dated 28.04.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. The instant bail application was presented on 29.05.2023 and fixed before the Court on the very same day when the applicant was granted interim pre-arrest bail and the matter was adjourned for 08.06.2023 for confirmation or otherwise. However, on 08.06.2023 the applicant was present but the complainant was called absent and the matter was adjourned for 06.07.2023. Again on 06.07.2023, the applicant was present but once again complainant was called absent as notice was not served upon him, as such, the matter was adjourned for 20.07.2023. On 20.07.2023, the applicant was present but his counsel was called absent and the matter was adjourned for 10.08.2023. On 10.08.2023, the applicant was present but again his counsel was not present. However, the complainant present in Court stated that he claims reimbursement of Rs.650,000/- from the applicant, as such, the applicant requested for time to arrange the said money and on his

request, the matter was adjourned for today i.e. 04.09.2023. But today the applicant and his counsel are called absent without any intimation.

4. From perusal of record, it appears that the complainant's company hired the applicant in 2022 as Rider whose duty was to collect money from the customers. The applicant submitted several fake receipts. When the complainant came to know about the same, he found amount of Rs.650,000/- is missing which he demanded from the applicant. However, on refusal of the same, the complainant filed the instant FIR. In such circumstances, the applicant has committed the offence of cheating and fraud with the complainant. The ocular evidence finds support from the other oral as well as documentary evidence. At bail stage, only tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the applicant/accused, which could be the ground for false implication in this case.

5. 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.

6. In view of the above, the instant bail application is **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicant/accused vide order dated 29.05.2023 is hereby recalled.

7. 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.

JUDGE

Kamran/PA