ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail No. 1082 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

18.09.2023

Mr.Mian Ashfaque advocate for the applicant
Mr. Muntazir Mehdi Add. P.G along with SI Naveed Shah AVLC

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Through the instant bail application, the applicant Karim Buksh has approached this Court for a grant of pre-arrest bail in FIR No.146/2023 registered for offenses under Section 411,420,468,471 PPC of P.S Shahara-e-Faisal, Karachi.

2. The Charge against the applicant is that he dishonestly received and retained the stolen property, i.e. care bearing No. AUB-322 Maker Toyota Corolla Model 2010, which was involved in FIR No. 506/2011 under Section 395/97 PPC of P.S Patok District Kasur. After FSL the original chassis number of said vehicle was found as NZE-1402116504. Such an incident was reported to the P.S AVLC/CIA Karachi, who registered the F.I.R No. 146 of 2023 under Section 411/420//468/471/ PPC on 15.2.2023. However, Section 412 PPC was added to the charge sheet and the matter was referred to session Court for trial.

3. Learned counsel for the applicant, inter alia, contended that the instant FIR has been registered against the applicant by concealing the true facts in order to harass and humiliate the applicant with malafide intentions and ulterior motives; that the case of the AVLC/CIA Police is false and the applicant did not commit any offence mentioned above; that though the applicant is nominated in the FIR, hovewever no role of recieveing the stolen property has been attributed to him, in fact the applicant purschsed the subject vehicle from its purported previous owner namely Qamar-U-Zaman Abbasi, who cheated him on the premise that he obtained the subject car on superdari from the learned Judicial Magistrate Islamabad vide order dated 16.11.2022 in F.I.R No73 of 2022 of P.S Phulgaran Islamabad and posed himself to be owner of the vehicle though the original owner was/is Muhammad Mumtaz Nawaz; that there is a delay of almost 12 days in registration of the FIR; that the facts as narrated in the FIR do not disclose any offence committed by the applicant being bonafide purchaser; that the investigation has been finalized and no physical custody is required by the police; that none of the alleged offences provide for punishment, which would fall

within the prohibitory clause of Section 497 Cr.P.C. thereby making it a matter in which grant of bail is a rule and refusal an exception; that the participation in the offence yet to be proved and it can be proved after recording of evidence; that no chance of tampering of record and evidence; that the applicant is previous non-convict and has no criminal record; that the case of the applicant is one of the further inquiry and probe. He next submitted that as far as repetition of offense is concerned on account of the other FIRs, it is now settled law that mere registration of FIRs is not a bar to remedy of bail, therefore none of the exceptions to the principles set forth by the Supreme Court in its various pronouncements on the issue of bail are attracted in this case. Learned counsel emphasized that mere heinousness of offense is no ground to reject the bail plea. The basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise; that the essential prerequisite for the grant of bail by subsection (2) of section 497, Cr.P.C. is that the court must be satisfied based on the material placed on record that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life; that condition of this clause is that sufficient grounds exist for further inquiry into the guilt of the accused which would mean that question should be such which has nexus with the result of the case and can show or tend to show that the accused was not guilty of the offense with which he is charged; that grant or rejection of bail is a discretionary relief but such discretion should be exercised fairly and judicially; that the word discretion when applied to court means sound discretion judiciously guided by law and to lessen the hardship of the people. He added that the basic principle of law is that the bail is not to be refused as punishment, particularly in cases of like nature.

4. On the other hand, the learned APG submitted that while the applicant was under arrest in F.I.R No. 146 of 2023 under Section 411,412,420,468,471 PPC recovery of stolen property has also been made from him. He submitted that the applicant is part of a gang involved in FIR No. 506/2011 under Section 395/97 PPC of P.S Patok District Kasur for the same and/or similar offenses as per CRO; that there is no delay in filing of the FIR and the alleged delay has been explained in the FIR itself, as such there is a sufficient material available on the record to connect the applicant with the commission of the alleged offense. Learned APG further submitted that the trial Court has to determine the guilt and innocence of the applicant so far as the applicability of Section 412 and 413, P.P.C., which provide punishment with imprisonment for life or rigorous imprisonment for 10 years and for dishonestly receiving stolen property, knowingly that it was obtained by dacoity and for habitually dealing in the stolen property. He prayed for the dismissal of the instant pre-arrest bail application.

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

6. The Supreme Court in the recent judgment has held that Pre-arrest bail is like a check on the police power to arrest a person against the non-availability of incriminating material or non-existence of a sufficient ground. While seeking pre-arrest bail it is the duty of the accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before the arrest is meant to protect innocent citizens who have been involved in heinous offenses with malafide and ulterior motives. The Supreme Court has held that ordinarily, no person is to be arrested straightaway only because he has been nominated as an accused in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer (IO) feels that sufficient justification exists for his arrest.

7. The Supreme Court in the case of *Rana Muhammad Arshad vs. the State* (**PLD 2009 S.C. 427**) observed that no court would have any power to grant pre-arrest bail unless all the conditions specified for allowing bail before arrest, especially the condition regarding mala fides were proved. The Hon'ble Court has drawn the framework within which and the guidelines according to which the jurisdiction vesting in the High Courts and the Court of Sessions is to be exercised. It shall be advantageous to reproduce the relevant portion for guidelines as follows:

> "(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
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> (b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
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> (c) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;
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> (d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonour him;
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> (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;
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> (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instant i.e. the Court of Session, before petitioning the High Court for the purpose."

8. In the present case, it has been urged that mere possession of the stolen property is not sufficient to constitute an offense under Section 411 PPC rather in addition it has got to be established that the person in possession of the stolen property had dishonestly received or retained the property knowing or having the reasons to believe the same to be stolen.

9. To the above proposition, primarily, to constitute an offense under the aforesaid Section, the prosecution is not only required to prove the possession but also to establish the knowledge about the property to be stolen. In the present case, the prosecution has presented the case to the extent that the subject property was stolen and involved in FIR No.506/2011 under Section 395/97 PPC of P.S Patok District Kasur and came into possession of the applicant by way of transfer from the person, who obtained the same on superdari from the concerned Court as discussed in the preceding paragraph.

10. The Supreme Court in the case of *MUHAMMAD SIDDIQUE V/S. IMTIAZ BEGUM* **(2002 SCMR 442)** has held that none can claim bail as of right in non-bailable offenses even though the same does not fall under the prohibitory clause of section 497 Cr.P.C.

11. I advantageously rely upon the case of *Shameel Ahmad v. The State* (**2009 SCMR 174**), and observe that the applicant notwithstanding the punishment of imprisonment, not falling under the prohibitory clause, cannot be admitted to pre-arrest bail as a matter of right overlooking the attending facts and circumstances of the case. For seeking bail in a non-bailable offense, it is incumbent that the accused shall establish prima facie, the fact that his case is open to further inquiry and/or case is based on malfide intention, both factums are missing in the present case. From the tentative assessment of the evidence on record, the prosecution case against the applicant brims with incriminating connecting evidence about receiving the stolen property involved in the criminal case, and no case of malafide on the part of the prosecution has been made out; hence, the applicant is not entitled to the extraordinary relief. Accordingly, the bail application is dismissed. The interim bail granted to the applicant vide order dated 18.5.2023 is hereby recalled.

12. Needless to mention here that the observations made herein-above are tentative and would not influence the trial Court while deciding the case of applicants on merits.

J U D G E