

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Zulfiqar Ahmad Khan

Cr. Bail Application No. 2520 of 2023 [Naseer Ahmed v. The State]

Applicant : Through Mr. Siraj Ahmed Khoso,
Advocate

State : Through Mr. Saleem Akhtar Buriro,
Additional Prosecutor General

Complainant : Through Mr. Saadi Sardar,
Advocate

Date of Hearing : 02.05.2024

Date of order : 02.05.2024

ORDER

Zulfiqar Ahmad Khan, J:- Through this Criminal Bail Application, applicant/accused Naseer Ahmed S/o Nazeer Ahmed seeks pre-arrest bail in Crime No.289 of 2023 registered with Police Station Samanabad, Karachi for offences under Section 342, 406, 420, 506-B PPC. His earlier application for the same relief bearing BBA No.2254 of 2023 was dismissed by the Court of IInd Additional Sessions Judge, District Central, Karachi vide order dated 02.11.2023. The applicant was admitted to interim pre-arrest bail by this Court vide order dated 06.11.2023, now the matter is fixed for confirmation or otherwise.

2. Precisely, the facts of the prosecution case are that after grant of relief under section 22-A Cr.PC complainant Raja Javed Sultan appeared before the Police Station Samanabad and disclosed that his wife Tahira Begum being sick and illiterate entrusted cash amount of Rs.7,100,000/, saving certificates and pay orders in favour of her real brother Naseer Ahmed for purchasing flats in her name in the year 2022, when she demanded the documents by her brother she came to know that the said brother had purchased flats on his own name instead on her name and

when the complainant has his wife demanded their flats the applicant confined them, abused and slapped, hence the FIR was lodged.

3. It is contended by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this false and fabricated case, which has been registered with one year delay. It is further contended that there is no proof of payment made to the applicant and that the amount of Rs.2,380,000/- (twenty three lac and eighty thousand.) has already been returned to the said lady. Learned counsel further contended that the flats were purchased by the applicant from his own savings. He next contended that the offence does not fall within prohibitory clause and applicant is first offender.

4. On the other hand, learned counsel for the complainant assisted by learned Addl. P.G. contended that applicant/accused has himself annexed Agreement to Sell dated 13.06.2022, whereby he has shown to have purchased a flat from seller Miraj Ahmed, to whom payment of Rs.2,380,000/- has also been made from the pay order of Mst. Tahira Begum, which is sufficient to show that the applicant has committed criminal breach of trust. He further contended that the applicant does not deserve any concession as he has cheated with his real sister. He next contended that there is no malafide or ulterior motive on the part of the complainant against the applicant/accused, hence the case is not fit for grant of pre-arrest bail.

5. I have heard both the learned counsel for the applicant as well as complainant and learned Additional Prosecutor General, Sindh.

6. *Prima facie* it appears that the complainant has specifically alleged against the applicant/accused that the real brother of his wife cheated her as well as certain transactions were made from the account of Mst. Tahira Begum including pay order amounting to Rs.2,380,000/- drawn on MCB, Block-7 Federal B. Area, Karachi such pay order is shown

as part of sale consideration given by the applicant/accused to the seller Miraj Ahmed and Ayesa Miraj. From tentative assessment of the evidence on record, it appears that the prosecution *prima facie* has sufficient evidence against the applicant to connect him with commission of the alleged offence. The counsel for the applicant has not been able to point out any special feature of the case entitling the applicant to grant of extra-ordinary concession of pre-arrest bail. Pre-requisite of such concession i.e. malice and ulterior motive, either on the part of the complainant or the police are conspicuously missing in the case. Nonetheless, the alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C, but it is settled principle of law that such Rule has no universal application and each and every case is to be decided on its own merits.

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

8. Above are the reasons of my short order dated 02.05.2024 in which the interim bail granted to the applicant vide order dated 06.11.2023 was recalled and the instant Criminal Bail Application was dismissed.

JUDGE

B-K Soomro