

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

Criminal Bail Application No.628 of 2024

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Date

Order with signature of Judge

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For hearing of bail application

**Date of hearing and Order:- 11.7.2024**

Syed Jamil Ahmed Shah Bukhari advocate for the applicant alongwith applicant Shaniyal Ali.

Ms. Rubina Qadir, Deputy PG alongwith IO/SI Rafaqat Butt PS Jauharabad Karachi

Mr. Badar Hussain advocate for the complainant.

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**Adnan-ul-Karim Memon, J:-** Through this criminal bail application, the applicant Shaniyal alias Faraz seeks pre-arrest bail in Crime No.12/2024, registered under Section 406/420/34 PPC at PS Federal B Industrial Area Karachi after his bail plea has been declined by learned II-Additional Sessions Judge, Karachi Central vide order dated 14.3.2024 on the premise that complainant got the possession of property/Godown from father of applicant on rent, for keeping sugarcane molasses, as the father of applicant through his son i.e. applicant filed Civil Suit No.1926/2023 before the learned Senior Civil Judge-X, Karachi Central for Declaration, Cancellation, Rendition of Accounts and Permanent Injunction against the complainant in which he admitted that he used to store and take away sugarcane molasses in the godown. However, the plaint was rejected under Order VII Rule 11 CPC in limine, and the appeal filed by the applicant before the VIth Additional District & Sessions Judge Karachi Central was too dismissed vide order dated 06.04.2024. The applicant being the attorney of his father, committed cheating and criminal breach of trust in respect of sugarcane molasses, even after lodging the FIR, the father of the applicant executed the agreement in which he admitted that they were/are liable to pay Rs.64,688,000/- to the complainant; and, the agreement also bears the signature of present applicant; and, in said agreement seven cheques had been issued, but were also bounced, and as pointed out above for cancellation of said cheques, the accused filed civil suit No.1926/2023 which was dismissed in limini.

2. Learned counsel for the applicant/accused has mainly contended that the applicant is innocent and has falsely been implicated in this case; and that there is a delay of more than three years in lodging of FIR, which is unexplained. He contends that the dispute between the parties is civil and section 406 PPC is not attracted. He also argued that the offense did

not fall within the ambit of the prohibitory clause and the applicant/accused is entitled to confirmation of the bail already granted to the applicant vide order dated 18.3.2024.

3. Learned counsel for the complainant has argued that the applicant/accused was nominated in the FIR with a specific role and no enmity between the accused and the complainant could be established. He also argued that the case of the prosecution was fully supported and independent and credible material is available on record to connect the accused with the commission of the offense. He added that the applicant is charged, under Section 406 of the Pakistan Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier and he committed criminal breach of trust as defined under Section 406 in respect of the property as a carrier as such he could be tried under Section 406 and 406 PPC. He further argued that the applicant has misused the concession of pre-arrest bail as he was directed to join the investigation but he failed to do so which comes in the definition of misusing of concession of interim pre-arrest bail, therefore he is not entitled to the concession of pre-arrest bail. He argued that concession of bail can not be allowed to an accused person unless this 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. He argued that it is also the golden principle of law that at the bail stage, only tentative assessment is to be made and a deeper appreciation of evidence is not required. Per learned counsel, sufficient material is available on record to connect the accused with the commission of the offense. In addition to the above, the grant of 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 bounded 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. He placed reliance on the case of 'Rana Abdul Khaliq v. The STATE and others' [2019 SCMR 1129].

4. Learned Additional PG also opposed the grant of bail to the applicant/accused on the ground that documentary proof is available on record and the applicant/accused has failed to establish any mala fide on

the part of the complainant. He has prayed for the dismissal of the bail application.

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

6. Prima facie, the allegations are well explained by the complainant in his F.I.R to the extent that the applicant in connivance with his father caused a huge financial loss to him by receiving the sugarcane molasses, which were stocked in godown and on-demand failed to deliver and committed criminal breach of trust; and, now he wants his amount back.

7. Perusal of the F.I.R. reflects that the alleged offense took place in June 2021 to June 2022 and the applicant approached the police on 17.01.2024 which is delayed more than three years in lodging the F.I.R. The complainant remained silent and did not report the matter to the police, which prima facie proves some malice on his part. The delay in lodging F.I.R. falls within the ambit of deliberation and afterthought, therefore, it is always considered to be fatal for the prosecution case in cases like the present case. Moreover, the section applied in F.I.R i.e. 406 P.P.C., carries a punishment of up to 07 years, as such, this offense does not fall within the prohibitory clause of Section 497 Cr.P.C. Furthermore, the trial Court vide letter dated 27.04.2024 reported that the applicant is not attending the Court, however, the learned counsel for the applicant emphasized that after the grant of bail, the applicant has joined the trial and attending the trial Court regularly. Be that as it may, prima facie the last assertion of the learned counsel for the complainant is not tenable in law for the reason that invoking the Provisions of PPC is not intended to be used for recovery of an alleged amount through bail proceedings as it is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under the PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies.

8. In this view of the matter, the possibility of false implication just to pressurize the applicant to gain ulterior motives cannot be ruled out at this stage. It is settled law that the liberty of a person is a precious right, which has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973, and the same cannot be taken away merely on bald and vague allegations. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux v. The State (PLD 1989 SC 347), Sajid Hussain alias Joji v. The State (PLD 2021 SC 898), Javed

*Iqbal v. The State* (2022 SCMR 1424) and *Muhammad Ijaz v. The State* (2022 SCMR 1271).

9. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing, its absence in the conduct of an accused to a degree that constitutes dishonesty by him within the meaning of the aforesaid sections of P.P.C. In the facts of the present case as discussed supra, such an assessment can be made at the trial to evaluate whether any improper benefit, if at all, has been derived by the applicant on account of the investment made by the complainant through his business transaction with the accused on the sale and purchase of plot in question. However, this aspect of the matter cannot be determined at the bail stage in the present case, however, the trial court would be in a better position to thrash out the aforesaid analogy under law.

10. The only question involved in the present bail matter is whether the bail can be refused in sections 420 PPC., which are bailable offenses, whereas Section 468 is punishable by up to seven years. In such circumstances, when the offenses do not fall within the prohibition contained in Section 497(1) Cr. P.C and punishment of the offense are less than 10 years, the Supreme Court in the case of *Iftikhar Ahmed v The State* **PLD 2021 SC 799** has given loud and clear directions to all courts in the country that granting bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule, and refusal shall be an exception.

11. Coming to the proposition bail in an offense punishable up to seven years, broadly speaking a person accused of a bailable offense has a right of admission to bail and an arrested person can be refused bail if it appears to the Court concerned that "reasonable grounds" exist for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment for ten years. Allegations against him are that he cheated the complainant and deprived him of his legitimate amount on the pretext that he would return the plot. Under the Code of Criminal Procedure 1898 (Act V of 1898) {Code} for bail the offenses are divided into two categories termed "Bailable offence" and "Non-bailable offence". These are defined under Section 4(b) as under: -

*(b) "Bail able offence, "non-bail able offence": "Bailable offence" means an offence shown as bail able in the Second Schedule or which is made bail able by any other law for the time being in force; and "non-bailable offence means any other offence"*

12. It is not disputed that in the case in hand offences under Section 420, leveled in FIR are bailable, whereas Section 406 is not bailable and punishable up to seven years. Sections 496, 497, and 498 of the Code although are inter-connected but reading of the same constructs certain distinctions. These provisions for better understanding are reproduced as under: -

***“496. In what cases bail to be taken: When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer incharge of a police station or appears or is brought, before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings, before such Court to give bail, such person shall be released on bail, Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as; hereinafter provided: Provided, further that nothing in this section shall be deemed to affect the provisions of Section 107, sub-section (4), or Section 117, sub-section (3).***

***497. When bail may be taken in case of non-bailable offence: (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:***

***498. Power to direct admission to bail or reduction of bail: The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall, not be excessive, and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced.”***

13. A plain reading of Section 496 of the Code makes it clear that powers under this provision can be exercised by a Court only for a person other than a person accused of a non-bailable offense. Whereas perusal of Section 497 also leaves no ambiguity that these powers are to be exercised in case of a non-bailable offense. However, powers under section 498 are beyond any such restrictions of bailable or non-bailable offense as it says that “the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail. Words “in any case” used in this provision makes no difficulty to understand that a person is irrespective of the fact that he is the accused of a bailable or non-bailable offense can be admitted to pre-arrest bail.

14. When reading all Sections (496, 497, and 498) together there remains no uncertainty that while deciding an application, may it be for bail after arrest or pre-arrest, in the bailable offense the Court is left with no discretion to refuse the concession to an accused as in such eventuality

the grant of bail is a right and not favor, whereas in the non-bailable offense the grant of bail is not a right but concession/grace.

15. As far as Section 406 PPC is not bailable but punishable by up to three years, and in case the same is committed by a clerk and by a servant the same is punishable up to seven years. So far as the criminal breach of trust is concerned, the concept of trust envisages that one person (the settlor) while relying upon another person (the trustee) and reposing special confidence in him commits property to him. There is a fiduciary relationship between the two in law. Section 405 PPC defines criminal breach of trust as follows:

***405. Criminal breach of trust.— Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust.***

16. There is essentially a dispute between the parties over the payment of sugarcane molasses docked at the godown. Hence, because of what has been discussed above, in my tentative opinion, the trial Court has to see whether Section 406 PPC is attractive or otherwise and the application of the same would be resolved by the Trial Court after recording the evidence.

17. Sections 420 P.P.C. is bailable while sections 406, P.P.C. being punishable for seven years do not fall within the prohibitory clause of section 497(1), Cr.P.C. The Supreme Court in the case of *Iftikhar Ahmed v The State* **PLD 2021 SC 799**, has held in categorical terms that granting of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule, and refusal shall be an exception and directed the Courts of the country to follow this principle in its letter and spirit because principles of law enunciated by the Supreme Court are constitutionally binding [under Article 189] on all Courts throughout the country.

18. Taking into consideration all the facts and circumstances stated above, I am of the view that the case of the applicant squarely falls within the ambit of proposition malafide and ulterior motives as enshrined in Section 498 Cr.P.C., entitling the applicant's case to be looked into by the trial Court on the aforesaid aspect.

19. As a result, this bail application is allowed. Ad-interim pre-arrest bail already granted to the applicant on 18.03.2024 is hereby confirmed in the same terms

20. Needless to say the observations made in this order are tentative and shall not influence the trial court while concluding the case within two months. The learned trial court is to expeditiously proceed with the trial under the law and, in case of abuse or misuse of the concession of bail by the applicant, including causing a delay in the conclusion of the trial, the prosecution may approach the competent court for cancellation of bail under Section 497(5), CrPC.

21. These are the reasons for the short order dated 11.07.2024 where the interim pre-arrest bail granted to the applicant vide order dated 18.3.2024 was confirmed.

JUDGE