

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

Criminal Bail Application No.2324 of 2023

Date

Order with signature of Judge

For hearing of bail application

Date of hearing and Order:- 15.7.2024

Mr. Harchand Rai advocate for the applicant alongwith applicant
Mr. Khadim Hussain, Additional PG alongwith SI Muhammad Irfan PS
Clifton (Investigation) Karachi
Mr. Amjad Ali advocate holding brief for Mr. Waqas Ali Chaudhry
advocate for the complainant

ORDER

Adnan-ul-Karim Memon, J: The applicant Muhammad Tanveer Khan has approached this Court for pre-arrest bail in FIR No. 332 of 2023 registered for offenses under Section 406/468/471/34 PPC of PS Aram Bagh Karachi.

2. His earlier bail plea has been rejected vide the order dated 10.10.2023 by learned X-Additional Sessions Judge Karachi South in Bail Before Arrest Application No.3377 of 2023 on the premise that he sold out the property of his father to another person, thus committed the offense under Sections 406/468/471 PPC registered at PS Arambagh Karachi South.

3. Learned counsel for the applicant states that all the pay orders were given to his father from the account of the applicant and in the lifetime of his father, he sold out the subject vehicle bearing registration No. BSV-509, maker of Honda Civic Model 2021, to another person, hence the mother of the applicant on the instigation of her elder son lodged FIR against her son/applicant on 25.9.2023 with the narration that he sold out the property of his father without obtaining succession certificate, however, subject FIR was delayed for about three months. He prayed for confirmation of the Interim pre-arrest bail granted to the applicant vide order dated 16.10.2023.

4. Learned Additional PG has opposed the bail application on the ground that the property of the husband of the complainant has been usurped by his son as such there is no malafide on the part of the complainant and police to book the applicant in the subject crime. He prayed for the dismissal of the bail application.

5. Learned counsel for the complainant is called absent with the narration that he is on general adjournment. This matter was taken up on 03.07.2024 and was adjourned to 04.07.2024 at the request of learned counsel for the complainant and again the matter was taken up on the very day learned counsel for the complainant requested for adjournment and the matter was adjourned for today but again he has failed to put his appearance as such this Court is left with no option but to hear the parties present in Court.

6. The Investigating Officer present in Court states that the FSL report has not yet come on record whether the applicant tampered with the documents of the subject vehicle and subsequently sold out the property to a third party, as such no concrete finding could be given, however, he supported the investigation report submitted before the trial Court on 31.10.2023, whereby the matter was initially disposed of under A-Class, but the learned Magistrate vide order 06.12.2023 directed to I.O to submit a progress report, which report was subsequently submitted under C Class vide progress report dated 17.01.2024 but the learned Magistrate vide order dated 17.02.2024 declined the request.

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

8. It appears from the record that there is a dispute between the family members over the sale and purchase of the vehicle that belonged to the father of the applicant and without the permission of his other legal heirs the subject vehicle has been sold out which triggered the cause to the mother of the applicant to lodge FIR against her son under Section 406/468 and 471 PPC. Since the Investigating Officer has disposed of the case initially under A-Class and then under C-Class which matter is stated to be pending before the learned Magistrate for final approval. Since parties are at loggerheads on the subject issue, therefore, judicial propriety demands that if the cognizance is taken by the learned Magistrate let the matter be resolved under the law within a reasonable time as no fruitful result will come out to send the applicant behind the bar in a inheritance dispute. Prima facie the last assertion of 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. 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.

9. 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 sale of the family car/vehicle. Besides, there is a dispute over the inheritance between the parties as pointed out by the applicant through his application under Section 22-A and 22-B Cr. P.C. and the order passed thereon by the Court dated 10.10.2023 (Page-113). 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 section 471 PPC., which is a bailable offense, whereas Sections 406 & 468 are 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 is 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 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.

11. 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 the applicant are that he cheated the family and deprived them of their vehicle. If this is the position of the case coupled with the issue of inheritance, in such circumstances the applicant/son of the complainant cannot be ordered to be detained for an indefinite period for the reasons that under the Code of Criminal Procedure 1898 (Act V of 1898) {Code} for bail the offenses are divided into two categories termed "Bailable offense" and "Non-bailable offense". These are defined under Section 4(b) as under: -

(b) "Bail able offense, "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 offenses under Section 471, leveled in FIR is bailable, whereas Sections 406 & 468 are 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. Coming to the applicability of Sections Section 406 PPC is concerned that 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. The essential ingredients of criminal breach of trust under section 405 PPC are: (i) the accused must be entrusted with property or dominion over it; (ii) he must have dishonestly misappropriated the property or converted it to his use or disposes it of in violation of any trust or willfully suffers any other person to do so. The offense of criminal breach of trust resembles the offense of embezzlement under the law. The punishment for ordinary cases is provided in section 406 PPC but there are aggravated forms of the offense also which are dealt with under Sections 407 to 409 PPC. However, in the present case, there is a considerable delay in lodging the F.I.R, as the complainant remained silent for the aforesaid period and did not report the matter to the police in time that she had been deprived of the family vehicle by her son, therefore, the delay and reporting the matter to police in time is always considered to be fatal for the prosecution case in bail matters.

17. 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. In the result, this pre-arrest bail application is allowed, and the interim pre-arrest bail already granted to the applicant Muhammad Tanveer Khan vide order dated 16.10.2023 is hereby confirmed on the same terms and conditions.

19. The observation recorded hereinabove is tentative and shall not prejudice either party at the trial.

JUDGE

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