

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1201 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicants	: through Mr. Fayyaz Ahmed Khokhar, Advocate along with Applicants (on bail)
1. Mst. Ghulam Sughra w/o Imdad Ali Shah	
2. Mst. Benazir Agha Tahir w/o Agha Tahir	
The State	: Through Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.
Complainant	: through Mr. Saeed Ahmed Awan, Advocate
Date of hearing	: 20.09.2024
Date of order	: 20.09.2024

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicants Mst. Ghulam Sughra and Mst. Benazir Agha Tahir seek their admission to pre-arrest bail in Crime No.150 of 2024 registered with P.S Model Colony, Karachi, for the offences punishable under Section 420, 406 & 506 PPC. The applicants preferred their bail plea before the Court of Sessions vide Criminal Bail Application No.2383 of 2024, which was assigned to 12th Addl. Sessions Judge, Karachi (East), who after hearing the parties, has declined their request. The case has been challaned which is now pending for trial before the Court of Civil Judge & Judicial Magistrate-V, Karachi (East) vide Criminal Case Nil (re-the State Versus Mst. Ghulam Sughra and another). Hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicants submitted that the offence with which applicants stand charged, carries punishment which does not exceed limits of prohibitory clause of section 497 Cr.P.C; besides, the applicants, after furnishing surety before this Court, have joined trial where documents in terms of Section 241-A Cr.P.C have been supplied to them and now the case before the trial Court is fixed for framing of charge. He further submitted that applicants being ladies, deserve to be admitted to bail. As far as, instant crime is concerned, the offence is of civil nature but the complainant in order to exert illegal pressure upon applicants, has dragged them into criminal litigation. He also submitted that applicant Mst. Ghulam Sughra had filed Civil Suit No.650 of 2024 before the Court of 6th Senior Civil Judge, Karachi (East) on 25.03.2024 much prior to registration of instant FIR and the complainant Muhammad Arshad has also filed Civil Suit No.796 of 2024 before the Court of 8th Senior Civil Judge, Karachi (East) (re-Muhammad Arshad Versus Mst. Ghulam Sughra and another); hence, submitted that case against applicants requires further inquiry and prayed for their admission to pre-arrest bail.

4. On the other hand, learned Deputy P.G, Sindh opposed the bail application on the ground that applicants though are ladies, have cheated the complainant by transferring property in dispute to third party, therefore, they are not entitled for the bail.

5. Learned counsel for the complainant while adopting arguments advanced by learned Deputy P.G, Sindh, also opposed the bail application and placed on record a copy of Sale Agreement as well as other documents, which were taken on record. He, therefore, submitted that applicants are not entitled for the bail more particularly when after furnishing surety before this Court, have failed to surrender before the trial Court. In support of his contention, learned counsel placed reliance upon the cases of Muhammad Ilyas Versus The State and others (2012 LAW NOTES 1330)

and KHADIM HUSSAIN Versus The STATE (2013 YLR 2265) and prayed for dismissal of the bail application.

6. **Heard arguments, record perused.** No doubt, the applicants are nominated in the FIR; however, per FIR, the incident is said to have occurred on 25.08.2023 to 05.09.2023 and report thereof was lodged on 14.05.2024 i.e. with a delay of about 9 months for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the Superior Courts to be fatal for the prosecution and in instant case though the complainant was in possession of certain documents even then he did not bother to get the case registered within time. The complainant himself has admitted in the FIR that he got verification of the property documents from the office of Registrar Malir Halt as well as Deputy Commissioner Malir; besides, got Search Certificate verified from the City Court and found that property in dispute was mutated in the name of Mst. Ghulam Sughra and then he entered into an Agreement to Sale with her, hence such admission on the part of complainant, shows the applicants had not defrauded him or cheated, therefore, question of cheating or fraud on the part of accused requires further probe more particularly when entire episode of the prosecution case rests upon the documents which are in custody of prosecution itself.

7. As far as, issue of title of the documents as well as fraud allegedly attributed to the applicants, is concerned, both parties have filed their respective Civil Suits before the competent forum(s); hence, issue with regard to title of genuineness of the documents is yet to be adjudicated upon by the competent Civil Courts where their respective Civil Suits are pending adjudication. In instant case, accusation against accused is also yet to be established by the prosecution after recording evidence of its witnesses and then the trial Court has to determine the same.

8. In the circumstances, case against applicants requires further inquiry within meaning of subsection (2) to section 497 Cr.P.C. As far as, law relied upon by learned counsel for the complainant, is concerned, same has different facts which are distinguishable from the facts and circumstances of

the present case. No complaint with regard to misuse of concession extended to the applicants, has been brought on record; besides, applicants being ladies, their case is covered by subsection (1) to section 497 Cr.P.C.

9. The upshot of above discussion is that applicants have successfully made out of a good prima facie case for their admission to pre-arrest bail within meaning of subsection (2) to section 497 Cr.P.C. Accordingly, instant bail application was allowed by a short order dated 20.09.2024; interim bail granted earlier to applicants **Mst. Ghulam Sughra widow of Imdad Ali Shah and Mst. Benazir Agha Tahir w/o Agha Tahir** on 31.05.2024 was confirmed on same terms and conditions.

10. Applicants present before the Court were directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against them as well to his surety(ies) in terms of Section 514 Cr.P.C.

11. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A