ORDER SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 385 of 2022

Zia-ur-Rehman **VERSUS** **The State, etc.**

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
	22.04.2022	Petitioner on ad-interim pre arrest bail with Mr. Hassan Rashid Qamar, Advocate. Mr. Haroon Rashid, Advocate for respondent No.2. Syed Shahbaz Shah, State Counsel with Sajid Cheema DSP (Legal) and Sanaullah Tareen, ASI.

Through theinstant criminal misc., petitioner (*Zia-ur-Rehman*) has prayed for pre-arrest bail in FIR No.614, dated 19.11.2021, under Section 406, 34, PPC registered at Police StationKarachi Company, Islamabad.

2- According to the allegations set-forth in the FIR, on 28.01.2021, petitioner *Zia-ur-Rehman* obtained Honda City Registration No.BBN-962 on rent from the showroom of the complainant at monthly rent of Rs.70,000/- on the guarantee of KashifLatif, an employee of NADRA department; that on 09.02.2021, petitioner visited the showroom and asked the complainant to provide original registration book with number plates and complete file as the vehicle had been impounded by the police at Lahore and he has to file an application for its interim custody; that complainant handed over the documents to the petitioner but latter on neither the petitioner returned the vehicle nor again visited the showroom and thus committed criminal breach of trust.

3- Learned counsel for the petitioner argued that the petitioner merely acted on the instructions of his superior, co-accused Kashif and handed over the vehicle after taking it from the complainant to one Aun Bashir; that if there is any agreement, the same is between the co-accused and the complainant; that the vehicle was damaged due to an accident; that the dispute has been settled by the complainant with co-accused Kashif and Aun Bashir pursuant to which two cheques

were given to the complainant besides cash of Rs.5,00,000/-; that the vehicle was subsequently sold to Muhammad Gulzar, an owner of Auto-workshop which still exists in the name of said Muhammad Gulzar; that the complainant also initiated action against Kashif and Aun Bashir due to dishonouring of the cheques; that petitioner had no role in the commission of the alleged offence; that nothing is to be recovered from his possession; that alleged offence does not fall within the prohibitory of clause of Section 497 Cr.P.C therefore, entitled to pre-arrest bail. Learned counsel relied upon order of the Hon'ble apex Court dated 23.10.2020 passed in Criminal Petition No.1067 of 2020 wherein accused in murder case were allowed pre-arrest bail. According to the learned counsel while deciding pre-arrest bail, the merits of the casecan also be looked into.

4- On the other hand, learned State counsel assisted by learned counsel for the complainant repelled the above submissions and asserted that involvement of the petitioner in the commission of the alleged offence is floating on the record as he himself admitted to have received the vehicle from the complainant; that no malice or malafide on the part of the complainant has even been alleged which is a pre-requisite for asking pre-arrest bail; that sufficient incriminating material is available on record against the petitioner, therefore, he is not entitled to the concession of pre-arrest bail.

5- Heard, record perused.

6- It is settled principle that remedy of pre-arrest bail being an extra ordinary remedy is meant to save innocent from false implication and humiliation at the hands of the police. The merits of the case can also be looked into in order to see as to whether the very implication of the accused is tainted with malafide on the part of the complainant or police. The protection is based upon equity and cannot be extended in every criminal case, prima facie, founded upon incriminatory evidence, warranting custody for investigation purposes. Reliance is placed upon case of *'Maqbool Ahmad Mahessar and others v. National Accountability Bureau (NAB) through Chairman and others* (**2021 SCMR 1166**).

7- Furthermore, an accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of evidence consequent upon arrest. Reliance is placed upon *'Kamran Ataullah and another v. The State*(**2021 SCMR 449**).

8- Record reveals that the rent agreement, made basis to lodge the instant FIR, was entered into between the petitioner and the complainant/respondent No.2 on 28.01.2021 pursuant to which the subject vehicle was handed over to the petitioner on the said date. According to the complainant, the petitioner visited the showroom on 09.02.2021 for taking the title documents of the vehicle in order to get it on *superdari* as it was impounded by the police at Lahore.

9- It is significant to note that the subject FIR was registered on 19.11.2021 after about seven months of the alleged incident that took place at Lahore. It is also a matter of record that a cheque worth Rs.750,000/- available on file, was issued in the name of showroom of the complainant which bears the date 24.02.2021 which has not been denied by the complainant.

10- Furthermore, it also emerges from record that after impounding the vehicle in the subject case, complainant and the registered owner Gulzar applied for its *superdari* but both the applications were dismissed by the Judicial Magistrate vide order dated 06.12.2021. The revision petition filed by the complainant against the said order was dismissed while that of rival claimant Gulzar was allowed and consequently interim custody of the vehicle was handed over to saidGulzar. The subject vehicle exists in the name of said Gulzar who also filed a suit for the determination of its title which is pending adjudication before the court of competent jurisdiction.

11- In view of above tentative assessment, it is observed that not only there is an inordinate delay in lodging the FIR but the subsequent events highlighted above wherein the title of the

vehicle is also under adjudication, the veracity of the allegation qua criminal breach of trust, *prima facie*, has become doubtful and, therefore, the element of malice and malafide on the part of complainant cannot be ruled out which makes the case of the petitioner to be one wherein exercise of extra ordinary discretion of pre-arrest bail would be just to meet the ends of justice, particularly, when the circumstances warrant further inquiry and the fact that the alleged offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C wherein grant of bail is a rule and refusal is an exception. Reliance is placed on *Muhammad Ramzan alias Jani versusThe State and others*" (**2020 SCMR 717**).

12- In view of above, instant criminal misc. is allowed and ad-interim pre-arrest bail granted to the petitioner vide order dated 05.04.2022 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

13- The observations made hereinabove are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R. Ansari