ORDER SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.467 of 2022

Nematullah
Vs
The State, etc.

Serial No. of order/ proceedings	Date of order/ proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
	27.04.2022	Petitioner on ad interim pre arrest bail with Mr.Shirjeel Javed Ch. Advocate. Mr. Zafar Iqbal, Advocate for complainant. Syed Shahbaz Shah, State Counsel. Safdar SI with record.

Through the instant Criminal Misc. petitioner-accused (*Nematullah)* prays for pre-arrest bail in FIR No. 341, dated 10.03.2022, Under Section 420, 468 & 471 PPC, registered at Police Station Tarnol, Islamabad.

2- According to the allegations set-forth in the FIR, on 12.07.2021, complainant struck a deal for the purchase of commercial plot, located in Faisal Town, Islamabad, through property dealer Farhan with the petitioner for consideration of Rs. 62,500,000/-, paid Rs.10,00,000/ as earnest money while as per writing, deal had to be finalized till 22nd August, 2021 but the matter was delayed and when he approached the Society Office, it revealed that the petitioner is not the owner of the plot rather it was a disputed one due to non-payment of dues, thus the property dealer Farhan, his brother Malik Ali and Nematullah had committed fraud with him.

3. Learned counsel for petitioner argued that the very registration of present FIR is tainted with malafide on the part of complainant; that none of the offences attract in circumstances of the case; that police investigation supports the version of the petitioner; that it was a civil dispute which had been converted into criminal one just to exert pressure; that nothing is to be recovered from the petitioner, therefore, entitled to the concession of pre arrest bail.

4. On the other hand, learned counsel for the complainant repelled the above submissions. It is asserted that the petitioner is nominated in the FIR and sufficient incriminating material is available on record which *prima facie* connects him with the commission of alleged offence and that in absence of any malice or malafide on the part of complainant or police, petitioner is not entitled to the concession of pre arrest bail.

5. Heard, record examined.

6. It is settled principle that pre-arrest bail is an extra ordinary remedy, to be extended by diverting usual course of law for the purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique. 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 alleged deal entered into between the petitioner and complainant on 12.07.2021 and the deal had to be materialized till 22.08.2021 while the instant FIR was registered with a delay of about more than six months of the date of finalization.

9- Furthermore, as per police investigation co accused Malik Farhan Ali has received token money of Rs.10,00,000/- from the complainant and that receipt of the said amount did not contain signatures of the petitioner. It

was also concluded that as per investigation, petitioner was found owner of the subject plot.

10- Record further reveals that co-accused Farhan also moved an application in this case which is part of record wherein it is mentioned that in order to return the token money, he sent a letter to the complainant along with the cheque but the complainant did not encash the same.

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, *prima facie*, create doubt on the veracity of the allegations to the extent of present petitioner, 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 to the extent of present petitioner and the fact that offences of Section 420 & 471 P.P.C are bailable in which bail is to be granted as a matter of right while offence 468 P.P.C, although non-bailable but is not covered within the ambit of prohibitory clause of Section 497 of Cr.P.C, wherein grant of bail is a rule and refusal is an exception. Reliance is placed upon judgment of the Hon'ble Supreme Court of Pakistan in a recent judgment reported as "*Iftikhar Ahmad v. The State*" **(PLD 2021 SC 799)** and **"***Muhammad Ramzan alias Jani v. The 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 18.04.2022 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