**ORDER SHEET**
**IN THE ISLAMABAD HIGH COURT,ISLAMABAD**
**JUDICIAL DEPARTMENT**

**W.P. No. 1430 of 2022**

**Shakeel Ahmed**

Vs

**Nadeem Haidri, etc.**

| Serial No. of order/ proceedings | Date of order/ proceedings | Order with signatures of judge, and that of parties of counsel, where necessary. |
|---|---|---|
| | 25.04.2022 | Mr. Zahid Mehmood Raja, Advocate for petitioner. |

Through the instant writ petition, petitioner/accused namely Shakeel Ahmed has prayed for *quashing* of FIR No. 278 dated 18.03.2022, under Section 406, PPC, registered at Police Station Aabpara, Islamabad.

2- According to the allegations set-forth in the FIR, that the petitioner has made agreement with respondent No. 1 for the sale of land, and on non-fulfillment of his obligation the dispute occurred and FIR was registered. After the registration of the FIR, the petitioner applied for pre-arrest bail, which is still pending before Additional Session Judge West-Islamabad and the petitioner has been enlarged on ad-interim bail vide order dated 19.03.20220 and now has filed instant writ petition for quashment of FIR.

3- Learned counsel for the petitioner contends thatmere breach of agreement does not attract the definition of criminal breach of trust; that it is settled that in case of failure to abide by the commitment/agreement, it will not be termed as misappropriation; that the concerned Investigating Officer cannot be allowed to assume the role of Civil Court which is not permissible under the relevant provision of law; that the dispute of the parties is of a civil nature , therefore, pending of criminal proceedings against the petitioner would be abuse of process of law, therefore, the subject FIR is liable to be quashed.

4- Heard, record perused.

5- The subject FIR stood registered against the petitioner on 18.03.2022, while the petitioner has already availed remedy of ad-interim pre-arrest bail.

6- The contentions of the learned counsel that an agreement does not constituted criminal breach of trust and that failure to abide by the terms of the agreement cannot be defined as misappropriation, in the backdrop of the allegation set-forth in the FIR to the effect that the petitioner has committed criminal breach of trust by not providing certain piece of land against Rs. 200,000/- , is a matter that requires factual inquiry, not permissible under constitutional jurisdiction, which is to be exercised in exceptional cases on the basis of facts admitted and patent on record to show that no offence is made out, and further proceedings would amount to abuse of process of law. Reliance is placed upon case of ***"State through Advocate-General, NWFP Peshawar and others. V. Gulzar Muhammad and others" (1998 SCMR 873) and "Miraj Khan V. Gull Ahmed and 3 others" (2000 SCMR 122)***.

7- In addition, petitioner retains more than one alternate remediesincluding an application under Section 249-A Cr.P.C., at any stage of the proceedings.

8- Admittedly, petitioner had already availed remedy of pre-arrest bail. In an identical situation, the Hon'ble Apex Court in the case of ***"Ajmeel Khan V. Abdul Rahim and others."*** (**PLD 2009 SC 102**) observed that:-

> *"Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamounts to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are*

> *under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police."*

09. In view of above, there exists no exceptional ground warranting quashing of subject FIR, consequently, the instant writ petition fails and accordingly **dismissed in limine.**

**(ARBAB MUHAMMAD TAHIR)**
**JUDGE**

***//Kamran//***