ORDER SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 1486 of 2022

Muhammad Mumtaz and 2 others
Versus
SSP, Islamabad & 5 others.

Serial No. of order/ proceedings	**Date of order/ proceedings**	**Order with signatures of judge, and that of parties of counsel, where necessary.**
	29.04.2022	M/s Hafiz Kala Khan and Mirza Imtiaz Baig, Advocates for the petitioners.

Through the instant writ petition, petitioners-accused namely Muhammad Mumtaz, Amjad Mumtaz and Muhammad Aftab have prayed for *quashing* of FIR No. 148 dated 16.03.2022, under Sections, 420, 468, 471 PPC, registered at Police Station Margallah, Islamabad.

2- According to the allegations set-forth in the FIR, petitioner No.3 instigated the complainant/respondent No.5 for the purchase of a crushing plant situated in Pathergarh, Tehsil Hassan Abdal, District Attock; that subsequently respondent No.5 met with Hassan Khan, Muhammad Mumtaz/petitioner No.1 and Amjad Mumtaz/petitioner No.2, who offered him 50% partnership in the crushing plant; that the respondent No.5 agreed with the proposal and entered into agreements dated 07.05.2021 and 16.06.2021 by paying rupees six crore and subsequently further paid rupees two crore and twenty-five lac and a vehicle. According to respondent No.5, when he along with his wife visited the site for taking possession, it revealed that the crushing plant is owned by another person and the accused persons committed fraud by entering into fake agreements.

3- During the course of arguments, learned counsel apprised that petitioner No.3 had already availed concession of post-arrest bail while pre arrest bail petition filed by petitioners 1 & 2 is *sub judice* wherein next ate of hearing is scheduled for 14.05.2021.

4- Learned counsel for the petitioners contends that on bare perusal of FIR it emerges that no offence whatsoever appears to have been committed by the petitioners; that factum of ownership of the petitioners is admitted by the complainant, therefore, offence under Section 420, 468 and 471 PPC are not made out; that the complainant has not denied signatures upon the agreements; that the dispute is of civil nature and further proceedings would be abuse of process of law, therefore, the subject FIR is liable to be quashed. Learned counsel relied upon case laws reported as 2017 P.Cr.L.J 133 (Islamabad), 2006 P.Cr.L.J. 1900 and 2011 P.Cr.L.J 1241,

5- Heard, record perused.

6- The subject FIR stood registered against the petitioners on 16.03.2022. The petitioner No.3 had already availed concession of post-arrest bail while pre arrest bail petition of petitioners 1 & 2 is pending adjudication.

7- As per allegations contained in the FIR, petitioners/accused by showing themselves owners of a crushing plant, entered into fake agreements, received huge amounts from the complainant despite the fact that the subject property was owned by someone else. On the contrary, it is case of the petitioners that actually they sold the subject property to one Hassan Khan with whom the complainant and his spouse are working as partners and that neither they received any amount from the complainant nor entered into any agreement. It also emerges from the record that the parties are tagged into civil litigation while the grounds being made basis for quashing the subject FIR require 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)***.

8- In addition, petitioners retain more than one alternate remedies including an application under Section 249-A Cr.P.C., at any stage of the proceedings. It also reveals from the document appended with the petition that for investigation of the case on merits, petitioners Mumtaz and Aftab have filed separate application to the IG, ICT which, of course, reflects recognition of the fact that factual inquiry in the attending circumstances of the case is essential.

9- 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."*

10- 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//