ORDER SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 622 of 2022

Natasha

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.
	08.06.2022	Petitioner on ad-interim pre arrest bail with M/s Imran Feroz & Mr. Mohsin Advocates, M/s Qazi Adil Aziz, ASC & Junaid Ahmad Qureshi Advocate for respondent No.2/complainant, Mr. Hazrat Younas State Counsel with Raza Muhammad SI.

Through the instant criminal misc., petitioner (*Natasha*) has prayed for pre-arrest bail in FIR No.795, dated 13.11.2021, under Section 420, 468 & 471 PPC registered at Police Station I-9, Islamabad.

2- According to the allegations set-forth in the FIR, on 07.11.2021, in order to sell his Car, *White Colour, Honda City, Model 2021, applied for*, complainant contacted with one Akbar Khan Abbasi on his *what's app No. 00447830706144*, and the deal was finalized in the sum of Rs. 27,70,000/-; that said Akbar Khan Abbasi transferred Rs. 20,000/- in the account of the complainant in two installments through easy-paisa; that on the next day i.e. 08.11.2021 said Akbar Abbasi sent his representative/driver who met the complainant in his house situated in Sector I-9 Islamabad, handed-over pay order No.BC990158330 of Rs. 27,50,000/- and copy of agreement/stamp; that complainant talked with Akbar Khan Abbasi through the cell phone of said representative and then handed over the Car to the latter; that on the next day i.e. 09.11.2021, when the complainant deposited the pay order in

MCB I-9 Branch Islamabad, it was reported that the said pay order is forged; upon this, the complainant tried to establish contact with Akbar Khan Abbasi and his representative/driver on Cell Phone No. 03200970258 but both the numbers were switched off. The complainant alleged that a fraud had been committed with him as he had been deprived of his Car by handing over forged pay order.

3- The subject FIR stood registered on 13.11.2021 while name of the petitioner surfaced on 24.05.2022 when the complainant through a written statement alleged before the police that his Car stood registered with ETO Gujranwala under No.AHN-293 in the name of Natasha *(petitioner*) with whom he had no transaction of sale and that the transfer had been made on the basis of forged documents by putting his forged signatures.

4- The petitioner joined the investigation and made statement to the effect that she purchased the Car from one Asghar Ali through a written sale agreement dated 18.02.2022 after paying full sale consideration; that the original documents were handed over to her by said Asghar Ali, who also managed transfer of the Car in her name.

5- The petitioner then moved an application for pre-arrest bail which was dismissed for non-prosecution by the learned ASJ, Islamabad-West vide order dated 13.05.2022. On the next day i.e. 14.05.2022, she filed the instant Crl Misc.

6- Learned counsel argued that petitioner is bonafide purchaser for consideration; that she had already joined the investigation; that she purchased the Car from one Asghar Ali, who also joined the investigation; that nothing is to be recovered from her possession; that complainant also testified that he had no connection whatsoever with the petitioner; that petitioner is also not required for further investigation; that petitioner hailing from outstation i.e. Gujranwala could not attend the court on the date fixed and soon on arrival, filed the

instant pre arrest bail petition; that alleged offences do not fall within the prohibitory of clause of Section 497 Cr.P.C therefore, petitioner is entitled to pre-arrest bail.

7- On the other hand, learned counsel for the complainant repelled the above submissions. It is argued that sufficient incriminating material in the shape of documents on the basis of which the Car was transferred in the name of the petitioner is available on record; that forged and fabricated documents had allegedly been used for the transfer of the Car while it is yet to be determined as to whether petitioner had any connection with the said fraud and forgery as she cannot escape of the liability of the alleged fraud being ultimate beneficiary of the same; 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 and that as the first pre arrest bail petition of the petitioner was dismissed for non-prosecution, therefore, under the principle set in by the Hon'ble Apex Court in the case of ***Shazaib etc v. The State (Crl P 1075-L.2020*)**, petitioner should at the first instance has to approach the Court from where her first pre arrest bail petition was dismissed for non-prosecution with explanation of her absence. The learned counsel prayed for dismissal of the instant bail petition.

5- Heard, record perused.

6- Record reveals that the first pre arrest bail petition of the petitioner was dismissed for non-prosecution on 13.05.2022. On being failure of the petitioner to appear on the first call, the petition was kept pending and ordered to be taken up on 08.40 a.m. in the morning when it was dismissed for non-prosecution. It is an admitted position that the petitioner, a lady, hails from outstation i.e. Gujranwala, Punjab, as reveals through memo of the petition filed before the learned ASJ and before this Court as well, therefore, in the attending circumstances, proper course had been to wait till the closing hour. The bonafide of the petitioner can be assessed from the fact that soon on the next day she filed the instant petition

without any loss of time and was also unable to arrange local surety and filed an application for furnishing cash surety at the time of her admission to ad interim pre arrest bail, therefore, in the attending circumstances highlighted above, the ratio set in the case of ***Shazaib etc*** is not applicable in case of the petitioner.

7- Adverting to the merits, it is noticed that the complainant himself stated that he had no transaction for sale of the Car with the petitioner. The petitioner by joining investigation had already furnished the details as to how and from whom she purchased the Car which stood transferred in her name and also I.O of the case stated that the petitioner is not required for investigation.

8- The perusal of record further reveals that during investigation, one Sharjeel had been joined in investigation who disclosed that one Mohsin Ali, his friend, struck a deal for the purchase of Car with the complainant; that amount of sale of the Car is also with said Mohsin who also got prepared forged pay order and that said Mohsin is involved in the commission of fraud with the complainant.

9- The investigation so far conducted did not bring on record any incriminating material through which involvement of the petitioner in the commission of alleged occurrence could be inferred, therefore, at present there exists no justification to hold her disentitled for extra ordinary concession of pre arrest bail particularly when the Investigating Officer, on being questioned, specifically stated that petitioner is not required for further investigation in the matter.

10- The Hon'ble apex Court in a recent pronouncement in the case of ***Shahzada Qaiser Arfat alias Qaiser v. The State and another"*** **(PLD 2021 Supreme Court 708)** has graciously held that:-

> *"The power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of* ***liberty, dignity, due process and fair trial****. Pre-arrest bail is in the nature of a check on the police power to arrest a person.* ***The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail****, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining* ***whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct****, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part."*
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> *(Emphasis added)*

11- The ratio set in the case of ***Shahzada Qaiser Arfat supra*** guides to hold that if there is non-availability of incriminating material against an accused, his/her implication by the complainant or the persistence of the police to arrest him, would be construed as the circumstances, which by themselves indicate malafide on the part of the

complainant or the police and in that eventuality, an accused need not to lead any evidence to substantiate the malice or malafide on part of the complainant or the police.

12- In view of above tentative assessment, petitioner has succeeded to make out a case for grant of pre arrest bail at this stage. However, in case any incriminating material connecting the petitioner with the commission of alleged offence is surfaced, the prosecution would be at liberty to seek cancellation of her bail in due course in accordance without law.

13- Consequently, instant criminal misc. is **allowed** and ad-interim pre-arrest bail granted to the petitioner vide order dated 16.05.2022 is confirmed subject to her furnishing fresh bail bonds in the sum of Rs.30,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

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

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//*