ORDER SHEET
IN THE ISLAMABAD HIGH COURT,ISLAMABAD
JUDICIAL DEPARTMENT

Crl Misc. No. 638-B of 2022

Muhammad Mumtaz & another

Versus

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.
	17.06.2022	Petitioners Muhammad Mumtaz and Amjad Mumtaz on ad-interim pre arrest bail alongwith Ch. Waseem Bahadar, Advocate. Mr. Qamar Inayat Raja, Advocate for respondent. Mian Zain Qureshi State Counsel alongwith Muhammad Ali Inspector/I.O. with record.

Through the instant criminal misc., petitioners-accused namely *Muhammad Mumtaz* and *Amjad Mumtaz* pray for pre arrest bail in FIR No. 148 dated 16.03.2022, under Sections, 420, 468, 471 PPC, registered at Police Station Margalla, Islamabad.

2- According to the allegations set-forth in the FIR, co-accused Muhammad Aftab instigated the complainant-respondent No.2 for purchasing a crushing plant situated in Pathergarh, Tehsil Hassan Abdal, District Attock; that subsequently complainant 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 complainant agreed with the proposal and he along with his wife 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. As per the complainant, 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- Learned counsel for the petitioners argued that there is inordinate delay of about year in lodging the FIR; that civil litigation, initiated prior-in-time, is already pending; that no forgery has been committed by the petitioners; that no offence under Section 420, 468 and 471 PPC is made out; that petitioner No. 1 being owner entered into agreement which act does not constitute offence in terms of Section 420, 468 and 471-PPC; that the complainant is only signatory of agreements dated 07.05.2021 and 16.06.2021 and, therefore, very registration of FIR is result of malice and malafide; that factum of validity of agreements is already *sub judice* before the learned Civil Court; that earlier application filed by wife of the complainant for the registration of FIR was dismissed; that local police is hand-in-glove with the complainant while application for change of investigation filed by the petitioners has already been accepted, therefore, petitioners are entitled to the concession of pre arrest bail. Learned counsel relied upon case law reported as **2015 YLR 2486, 2003 MLD 1745, 2015 MLD 1266, 2015 P Cr. L J 1469, 1986 SCMR 1380, 2017 MLD 349, 2007 P Cr L J 752 and 2012 YLR 21.**

4- On the other hand, learned counsel for complainant repelled the above submissions by arguing that both the petitioners are specifically nominated in the FIR while entering into agreements, *prima facie*, lend support to the allegations particularly when the petitioners were not the owners of the crushing plaint rather it was ownership of the State at the time when they entered into agreement to sell; that petitioners have not produced the crucial document; that it is a pre arrest bail petition, parameters of which are entirely distinct than that of post arrest bail; that sufficient tangible evidence including petitioners' own stance is available on record; that mere pendency of civil litigation is no ground to extend concession of pre arrest bail as both can run side-by-side while doing so, the entire process of investigation will be curbed and will be a hurdle in the way of recovery of incriminating articles. Learned

counsel refers order dated 26.04.2022 passed by this Court in Crl Misc. No.464-B of 2022.

5- Heard, record perused.

6- After the careful perusal of the material placed on record, it came to light that though parties are in civil litigation but the fact remains that petitioners are nominated in the FIR with specific allegations which, apparently find corroboration from the letter dated 16.04.2022 issued by the Ministry of Mines & Mineral Department Attock whereby the subject property is the ownership of the Government. This fact, *on the face of it*, makes the claim of ownership of the petitioner, as asserted in Para-11 of the memo of the petition, dubious.

7- Furthermore, it is also a matter of record that despite notice by the Investigating Officer, the petitioners opted not to surrender the document i.e. stamp paper bearing No.275, in order to gauge the veracity of the allegations leveled by the complainant during the investigation.

8- In-addition, as per investigation, so far conducted, petitioners were, *prima facie*, found involved in the commission of alleged offence as they sold out the government owned property against huge amounts and had been reluctant to hand over the stamp paper, recovery of the same is yet to be effected.

9- It is well 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**).

10- 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**).

11- In view of the law laid down in the case of ***Muhammad Siddique v. Imtiaz Begum and 2 Others*** **(2002 SCMR 442)** none can claim bail as of right in non-bailable offences even though the same does not fall under the prohibitory clause of section 497 Cr.P.C.

12- The Hon'ble Apex Court in the case of ***Rana Muhammad Arshad v/s. Muhammad Rafique and another*** (**PLD 2009 S.C. 427)** has graciously held that no court would have any power to grant pre-arrest bail unless all the conditions specified for allowing bail before arrest, especially the condition regarding ***mala fides*** were proved. The Hon'ble Court has drawn the guidelines for the exercise of jurisdiction which are as under:-

> (a) Grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
>
> (b) Pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;
>
> (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disagree and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instant i.e. the Court of Session, before petitioning the High Court for the purpose.

13- The Hon'ble Apex Court in the case of "***Shameel Ahmad v. The State***" (**2009 SCMR 174),** graciously held that an accused notwithstanding the punishment of imprisonment, not falling under the prohibitory clause, cannot be admitted to bail as a matter of right overlooking the attending facts and circumstances of the case. For seeking bail in a non-bailable offence, it is incumbent that the accused shall establish *prima facie,* the fact that his case is open to further inquiry.

14- Having examined the case on the touchstone of the principles ibid and on tentative examination of the material collected by the prosecution, it appears that petitioners have failed to make out a case for grant of pre arrest bail. Consequently, instant criminal misc. fails and accordingly **dismissed**. Ad interim pre arrest bail already granted to the petitioners vide order dated 20.05.2022 is hereby recalled.

15. The above observations are tentative in nature and shall have no impact upon merits of the case.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//