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

Criminal Misc. No. 659/2022

Ali Zaman, etc.

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.06.2022:	Ch. Muhammad Nasir, Advocate for petitioner. Mr. Qamar Inyat Raja, Advocate for respondent. Mr. Shahbaz Shah, State Counsel with Muhammad Ali, Inspector.

Through the instant Crl. Misc, the petitioners are seeking bail before arrest in FIR No. 75/2022 dated 11.02.2022 under Section 420,468,471 PPC registered with police station Margallah, Islamabad.

2- As per the contents of the FIR, the petitioners have tempered registry No. 7738 and prepared a fake sketch of land and the same was presented before the Civil judge Islamabad and got decreed the suit in their favour.

3. The learned counsel for the petitioners contends that the registry in question was prepared in the year 1975 and on the basis of the said registry, the petitioners filed a suit in the year 2009 which was decreed in favour of the petitioners; that the said suit was contested by the complainant of the instant FIR and was arrayed as respondent No. 2; that the suit was decreed on 28.04.2021 and it was only when the petitioners filed execution of the said decree which has attained finality, the complainant came up with this story in connivance with the police officials that a fake registry has been prepared by the petitioners; that the registry was very much exhibited before the Court of Civil Judge and the

same was made part of the record. The PW in whose statement, the registry was exhibited was cross examined by the counsel for the complainant and no such assertions were ever made with regard to tempering of the registry; that it is all an afterthought to pressurize the petitioners to sit with the complainant and settle the dispute; that in case if any tempering has been made and the same was presented before the Court of competent jurisdiction, then at the utmost an offence could have been tried by the Court itself before which the said fake registry was presented rather than lodging an FIR; that under section 476 Cr.P.C read with section 195 Cr.P.C the court was empowered to lodge an FIR and try the offence itself.

4. While faithfully contesting the bail application, the learned counsel for the private respondent assisted by the learned State counsel stated that the petitioners have committed forgery with the Court and the same has been proved beyond shadow of doubt; that the documents collected during the investigation by the ivnestigting officer proves the guilt of the petitioners and proves the stance of the complainant as alleged in the FIR; that the petitioners knowingly defrauded the complainant and deprived him of his legal and lawful ownership of land; that the sections of 468,471, 420 of PPC are fully attracted in the instant matter; that the petitioners are not entitled to extra ordinary relief of bail before arrest.

5. Arguments heard, record perused.

6. Perusal of the record would reveal that all the documents pertaining to the registry No. 7738 whether original or photocopies allegedly prepared and tempered by the petitioners have been taken into custody by the investigation officer during the investigation. The petitioners are aged people of above 60 years age and the investigation in the matter has been almost completed as per the scrutiny of the police record. The petitioners while securing interim bail from this court hence joined the investigation and there statements have been recorded which are available on the

police record. The offence alleged in the FIR are bailable in nature except 468 PPC which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C.

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."*
> *(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, petitioners have 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 their bail in due course in accordance with law.

13- Consequently, instant criminal misc. is **allowed** and ad-interim pre-arrest bail granted to the petitioners vide order dated 24.05.2022 is confirmed subject to their furnishing fresh bail bonds in the sum of Rs.30,000/- with one surety each 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 MUHAMAMD TAHIR)
JUDGE

//Kamran//