

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Miscellaneous No. 34-B of 2020

Raja Qasim Umer
Versus
Imtaiaz Hussain and another

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.02.2020	Raja Muhammad Shafat Khan, Advocate for the petitioner alongwith petitioner on ad-interim bail. Mr. Muhammad Masood Anwar, Advocate for the complainant. Hafiz Malik Mazhar Javaid, State counsel along with M. Akram, A.S.I with record.

GHULAM AZAM QAMBRANI J. Through the instant petition, the petitioner (Raja Qasim Umer s/o Raja Umer Hayat) has sought pre-arrest bail in case F.I.R No.444/19, dated 21.10.2019 registered under Section 406 of Pakistan Penal Code, 1860, at Police Station Kohsar, Islamabad.

2. Brief facts as narrated in the F.I.R are that the complainant is running business of “Rent a Car” and pursuant to an agreement; he handed over vehicles to the petitioner on monthly rent basis. It has been further submitted that the petitioner has not paid the rent for the last six months. The petitioner has

misappropriated the vehicles of the complainant and committed the offence of criminal breach of trust. Hence the instant F.I.R.

3. The learned counsel for petitioner has contended that; the latter is running business of "Rent a Car" with name and style of 'SMART LINKS SERVICES'; an agreement, dated 12.12.2018 was executed between the parties with respect to nine vehicles at monthly rent of Rs. 4,58,000/-; the petitioner handed over the vehicles to the complainant, whereas the vehicles mentioned in the FIR are with the customers; vehicle bearing No.CF-639 was rented out to one Syed Ashraf Shoaib against whom the petitioner got registered F.I.R No.294, dated 28.07.2019 and the said vehicle after recovery was handed over to the complainant; vehicle bearing No. ADF-285, rented out to one Malik Yasir against whom F.I.R No.293/2019 was got registered by the petitioner and vehicle bearing LEF-9686 was rented out to one Irfan; on asking of the complainant, the petitioner got arranged a meeting of Malik Yasir and Irfan with the complainant; due to consent given by the complainant, the said two vehicles are on rent basis with the above said persons; offence under Section 405 P.P.C is not attracted against the petitioner; the

petitioner has been involved in the instant case with malafide intention of the complainant; the petitioner has been involved in the instant case just to convert the civil litigation into criminal one for pressurizing the petitioner; story as narrated in the FIR is false, frivolous and concocted; the petitioner is innocent; the complaint is based on surmises and conjectures; the petitioner is previously non-convict and non-record holder; the case against the petitioner is that of further probe; no case is made out under section 406 of PPC and, therefore, it is not a case of 'criminal breach of trust', the dispute between the parties is that of civil nature. The learned counsel has, therefore, urged confirmation of the pre-arrest bail already granted to the petitioner vide order, dated 17.01.2020.

4. Conversely, the learned State counsel assisted by the learned counsel for the respondent (complainant) vehemently opposed the contentions raised by the petitioner and has contended that; there is no malafide on part of the complainant to falsely implicate the petitioner in commission of offence; the petitioner has violated the terms and conditions of the agreement and the provision of Section 405 P.P.C are fully attracted against the

petitioner; the petitioner had escaped from the Court of Additional Sessions Judge, Islamabad at the time of dismissal of his pre-arrest bail; the petitioner has committed the offence of criminal breach of trust; investigation qua the petitioner cannot be treated as complete in such circumstances and it could not be ruled out that further material might be collected for proceeding against the petitioner; the petitioner had misappropriated the vehicles of the complainant; the petitioner is nominated in the FIR with specific role; the petitioner has not been able to point out any malafide on part of the complainant or the police for registration of the instant FIR; pre-arrest bail is granted when it becomes obvious that the registration of the case was based on enmity, malafide or where no offence was shown to have been committed on the very face of the record; the petitioner has defrauded the complainant and grabbed his valuable vehicles. In the circumstances, the learned State Counsel has prayed for dismissal of the pre-arrest bail already granted to the petitioner.

5. Arguments heard. Record perused.

6. Perusal of the record reveals that though the petitioner is nominated in the F.I.R but contention of

the complainant is that pursuant to an agreement, dated 12.12.2018, he has rented out the vehicles to the petitioner on monthly rent basis. Perusal of the agreement shows that the vehicles have been given on lease to the petitioner for a period of two years and the rate of rent has been fixed as Rs.4,58,000/- per month for nine vehicles, details of which has been prescribed therein. It further reveals that the petitioner has further rented out the said vehicles to different customers. The learned counsel for the petitioner has placed on record copies of F.I.Rs No.294/2019 & 293/2019 registered at Police Station Karachi Company, Islamabad, against the said customers who after obtaining the vehicles on rent basis, did not return back the same.

7. Section 405 of the Pakistan Penal Code, 1860 is reproduced as follow:-

"Section 405. Criminal breach of trust: *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."*

8. Admittedly, the complainant has handed over the vehicles to the petitioner on monthly rent basis. There was an agreement between the parties and for the redressal of grievance; the complainant has the remedy to resort to the competent court of jurisdiction. In the circumstances, it cannot be ruled out at this stage that the instant criminal case may have been registered to pressurize the petitioner for a settlement. Whether or not the ingredients of section 406 of PPC are fulfilled in the instant case needs further probe. The offence does not fall within the ambit of the prohibitory clause under section 497(1) of Cr.P.C. It is important to note that in case of *"Zafar Iqbal vs. Muhammad Anwar and others"* [2009 SCMR 1488]; a larger Bench of the apex Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. It has been held by the apex Court that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Confirmation of pre-arrest bail is indeed distinguishable from granting post arrest bail. Sufficient incriminating material is not available on record to refuse confirmation of pre-arrest bail. At this stage, it cannot be ruled out that

the case was registered to harass and humiliate the petitioner. Therefore, a case is made out for confirmation of bail in the light of the principles laid down by the august Supreme Court in the case titled "*Rana Muhammad Arshad vs. Muhammad Rafiq and another*" [PLD 2009 S.C. 427].

9. It has been observed by the Hon'ble Supreme Court in the case titled as "*Manzoor and 04 others vs. The State*" [PLD 1972 S.C. 81] in the following words.-

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

10. In view of above, this petition is allowed and the pre-arrest bail already granted vide order, dated 17.01.2020 is confirmed, on the same bail bonds already furnished by the petitioner.

11. Needless to add here that observations, if any, made hereinabove, are tentative in nature, which shall not affect merits of the case at trial stage.

(GHULAM AZAM QAMBRANI)
JUDGE