

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

Criminal Miscellaneous No.170-B/2020

Ch. Muhammad Ramzan
Vs.
The State and another.

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.03.2020	Ch. Zubair Mehmood Gujjar, Advocate along with petitioner. Mr. Naveed Malik Advocate along with Complainant. Mr. Hafiz Mazhar Javaid, State Counsel. Asif Riaz, Sub-Inspector.

Through the instant petition, the petitioner *namely, Chaudhry Muhammad Ramzan S/o Chaudhry Gul Zareen* has sought bail before arrest in case F.I.R No.498, dated 23.10.2019 registered under sections 447/511/506-(ii)/337H-(ii)/148/149/ 452 of Pakistan Penal Code, 1860 (hereinafter referred to as “PPC”) at Police Station Bhara Kahu, Islamabad.

2. Briefly stated facts of the prosecution case are that on 23.10.2019, on the written report of one Muhammad Masood Anwar F.I.R No.498/2019 was registered at Police Station Bhara kahu with the averments that on 02.11.2016, he entered into a sale

agreement with the petitioner with regard to his landed property measuring 30 Kanals 12 Marlas but later on the petitioner could not perform his part of obligation therefore, it was cancelled and they entered into a new agreement, dated 01.07.2019 for sale consideration of Rs.3,36,00,000/- (three crore thirty six lac). The petitioner paid an amount of Rs.47,50,000/- (forty-seven lac and fifty thousand) as partial payment and the remaining amount was to be paid on 01.09.2019. It has been alleged that the petitioner failed to pay the final amount. The complainant asked for cancellation of the agreement whereupon the petitioner became annoyed and the latter along with eight to ten (8-10) persons entered into their house, made aerial firing and extended threats for dire consequences to life of the complainant. It has further been alleged by the complainant that the petitioner has also extended threats to security guard of the complainant, hence the instant FIR.

3. The learned counsel for the petitioner has contended that the latter is innocent; the petitioner has been involved in the instant case with malafide intention of the complainant; the instant case has been registered against the petitioner in

connivance with the local police; story as narrated in the F.I.R is false, frivolous and concocted; there is no direct or indirect evidence against the petitioner for the commission of the alleged offences; there is an inordinate and unexplained delay of seven (07) days in lodging the FIR, which is the result of consultation and roping the petitioner falsely; the petitioner has already filed a civil suit against the complainant for specific performance of the agreement; the offences are not attracted against the petitioner and do not fall within the ambit of prohibitory clause of section 497 of Cr.P.C. The learned counsel has therefore, urged for the confirmation of the pre-arrest bail already granted to the petitioner.

4. Conversely, the learned State counsel assisted by the learned counsel for the complainant has vehemently opposed the contentions raised by the learned counsel for the petitioner and has contended that the petitioner is specifically nominated in the F.I.R.; the offences are cognizable in nature; civil litigation is pending between the parties regarding the disputed land; the pre-arrest bail of the petitioner was dismissed by the learned Additional Sessions Judge, Islamabad vided order, dated

20.02.2020; the conduct of the petitioner brings his case within the exception to the general rule in cases of offences falling within the non-prohibitory clause of section 497 of Cr.P.C. It has been alleged that in the circumstances the petitioner is not entitled to the concession of bail and prayed for dismissal of the instant petition.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record reveals that though the petitioner is nominated in the F.I.R but except statement of the complainant, there is no other evidence against the petitioner to involve him with the commission of the alleged offences. The alleged offences are stated to have been committed on 16.10.2019, whereas the instant F.I.R was registered on 23.10.2019, i.e. after a delay of seven days without any plausible explanation. Furthermore, time of occurrence has not been mentioned in the FIR. It is ~~an~~ admitted that civil litigation is pending between the parties. The record further shows that prior to registration of instant F.I.R., the present petitioner had filed a civil suit on 05.09.2019, against the

present complainant in respect of same property. The Investigating Officer present in the Court has admitted the fact that the present petitioner coordinated with him in investigation. However, the Investigating Officer could not bring on record sufficient incriminating material against the present petitioner. Therefore, all these factors make it a case of further probe. Hence, in these circumstances, *prima facie*, the possibility of malafide and ulterior motives on part of the complainant, in lodging the instant F.I.R. against the petitioner, cannot be ruled out. The offences do not fall within the prohibitory clause of section 497 of Cr.P.C. By now the law and principles for grant bail in such cases are well settled. It is important to note that in the case of "*Zafar Iqbal versus 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 further been held 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 a post arrest

bail. In the circumstances, a case is made out for confirmation of bail in the light of the principles laid down by the Hon'ble Supreme Court in the case titled "*Rana Muhammad Arshad versus Muhammad Rafique and another*" [PLD 2009 S.C. 427] and "*Zuhair Abbas Taheem versus The State and others* " [2017 SCMR 77]. This Court is, therefore, inclined to confirm pre-arrest bail already granted to the petitioner.

7. For what has been discussed above, the instant petition is ***allowed*** and the pre-arrest bail already granted to the petitioner vide order, dated 03.03.2020, is hereby **confirmed**, on the same bail bonds, already furnished by the petitioner.

8. Needless to mention that this is a tentative assessment, which shall not effect the trial of the case in any manner.

(GHULAM AZAM QAMBRANI)
JUDGE

*Rana.M.Ijt**