

JUDGMENT SHEET  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.932-B/2020**

**SAMINA QASIM TARAR AND ANOTHER.**  
Versus  
**THE STATE AND ANOTHER.**

*Petitioner by:* Syed Hussain Abuzar Ahmad and Sheyryar Nawaz Malik, Advocates.

*Complainant by:* Ch. Amjad Ali, Advocate.

*State by:* Ms. Bushra Tariq Raja, State Counsel.  
Mr. Ijaz Cheema, S.I.

*Date of Hearing:* 21.09.2020.

-----

**LUBNA SALEEM PERVEZ; J.** Through instant petition, both the petitioners seek pre arrest bail in case FIR No.163/2020, dated 28.04.2020, for offences under section 406/448 PPC, registered at Police Station Lohi Bher, Islamabad.

2. Record reveals that the petitioners applied for pre-arrest bail before Additional Sessions Judge (East), Islamabad, which was declined vide order dated 20.08.2020. Hence, present petition for bail before arrest.

3. Facts as per FIR are that complainant entered into an agreement to sell dated 30.07.2019, regarding house No. 1885, Road No. 1, Phase-III, Bahria Town, Rawalpindi, with petitioner No.1, being the owner, through property dealers namely Muhammad Anwar and Raja Asad, in presence of petitioner No.2/husband of petitioner No.1. At the time of agreement, complainant paid an amount of Rs. Rs 65,00,000/- as partial payment and took possession of two rooms on the upper portion of the said house. Later on complainant paid an amount of Rs. 10,00,000/- and 5,00,000/- to the petitioner No.1 on 15.10.2019 & 04.11.2019, through cash and cheque, respectively in the presence of petitioner No.2 and other property dealers. The agreement to sell was extended till 31.12.2019 on the request of petitioners. However, when complainant approached the petitioners for transfer of house in his name on the fixed date, they avoided to transfer the same and complainant came to

know from the Bahria Town office that the subject house had already been sold and transferred in the name of one Noman Sultan also an accused in the FIR. Accused petitioner despite acceptance of their fault, refused to return the amount of Rs. 80,00,000/-. Hence. FIR for offence u/s 406/448 PPC.

4. Learned counsel for the petitioner submitted that petitioners are innocent and no offence as alleged in the FIR has been made out against the petitioners; that dispute between the parties is of civil nature regarding sale of house for which complainant paid an amount of Rs. 80,00,000/- but failed to pay the remaining sale consideration within stipulated period of the agreement dated 30.07.2019 and asked for further time; that it has clearly been mentioned in paragraph No.10 & 11 of the agreement to sell that anyone who will not abide by the terms of the agreement, shall be liable to pay an amount of Rs. 10,00,000/- and as complainant did not comply with the terms of the agreement a civil suit for declaration, cancellation of agreement dated 30.07.2019 and for recovery of damages and permanent injunction has already been filed by the petitioners against complainant; that the complainant is using the present FIR as a blackmailing tool so as to counter the civil case; that no case triable under the alleged offence has been made out against the petitioners. Learned counsel lastly submitted that the case does not fall within the prohibitory clause of Section 497 Cr.P.C and the case against the petitioner is one of further inquiry which needs recording of evidence, whereas, there is no apprehension of tempering of record by the petitioners and there is also no apprehension of their abscondence as they are cooperating with the prosecution and attending the case as and when required. He prayed for confirmation of pre-arrest bail.

5. Conversely, learned counsel for the complainant vehemently opposed the arguments of the petitioner and submitted that case under the offences mentioned in the FIR have been made out against the petitioners as neither agreement to sell nor payment of an amount of Rs. 80,00,000/- has been denied; that there is sufficient material available on record to connect the petitioners with the commission of alleged offence; that if granted pre-arrest

bail, petitioners are likely to misuse the concession of bail, therefore, they are not entitled for extraordinary concession of pre-arrest bail.

6. Heard the learned Counsel for the parties as well as learned State Counsel and have also perused the police record.

7. The petitioners are seeking pre-arrest bail on the ground that the dispute between the parties is purely of civil nature regarding which a suit filed by them is pending adjudication before the concerned civil court, whereas, actually the complainant has failed to make payment of remaining sale consideration as per terms of the agreement to sell dated 30.07.2019. The accused petitioners prima facie have not denied payment of Rs. 80,00,000/- by the complainant in lieu of partial payment of sale consideration but have claimed that the sale could not be completed due to failure of the complainant to pay the remaining sale consideration which is contentious and can be resolved properly during trial, hence, it becomes a case of further inquiry. Reliance in this regard is placed on the case law reported as **Khoyal Saba and another Vs. The State and another (2020 SCMR 340)** and **Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310)**. Since, there is nothing brought before the Court by the prosecution that the accused petitioners are not cooperating in the investigation, therefore, there remains no ground of their abscondence. Petitioners have also filed suit against complainant which *prima facie* relates to the controversies in connection with sale agreement and as a consequence thereof the FIR under consideration has been registered. Moreover, the petitioners are previously non-convict and the offences do not fall within the prohibitory clause of section 497 Cr.PC and the Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard has time and again held, that when an offence does not fall within the prohibitory clause of Section 497 Cr.P.C, bail is a rule and refusal an exception. In this regard, guidance has been sought from the case law reported as **Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR, Page 1708)**, **Sikandar Zaman Vs. The State etc. (2011 SCMR, page 870)** and **Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR, page 1488)**. Hence, petitioners become entitle for grant of concession of pre-arrest bail.

8. For what has been discussed above, this bail petition is **accepted** and the earlier ad-interim pre-arrest bail granted to the petitioners, vide order dated 24.08.2020, is hereby confirmed, subject to furnishing of fresh bail bonds in the sum of Rs. 2,00,000/- (Rupees Two Lac) with one surety each in the like amount, to the satisfaction of learned Trial Court.

9. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*M. Junaid Usman*