

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 846 of 2022

Meer Azam

Versus

The state and another.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
	21.07.2022	Mr. Asad mahmood Qureshi, Advocate for petitioner. Mr Imran Feroze malik, Advocate for respondent. Mian Zain Qureshi, State Counsel with Imran Haider, SI.

Through the instant criminal misc., petitioner (Meer Azam) has prayed for pre-arrest bail in FIR No. 395, dated 26.04.2022, under Section 420, 468 & 471 PPC registered at Police Station Bhara Kahu, Islamabad.

2. According to the allegations set-forth in the FIR, the respondent No. 2 has allegedly purchased 50 files pertaining to a housing society namely G.C. Homes from the petitioner against the consideration amount of Rs. 4,150,000/-. As per the assertions made in the FIR, the said files were found fake and bogus, hence the instant FIR.

3. The learned counsel for the petitioner stated that the petitioner has not defrauded the respondent; that the said files were never fake or bogus rather were issued by the agent of the petitioner; that the case of the prosecution is based upon documentary evidence which has already been taken in custody by the Investigating Officer, as such, custody of the accused is not required as nothing has to be recovered from his possession; that independent inquiry in the instant matter was carried out by the SP Investigation wherein both the parties were heard at length and it was declared that transaction

between the parties is one of the civil in nature rather than criminal.

4. The learned counsel for the respondent No. 2 assisted by the State Counsel stated that the petitioner has deprived the respondent along-with many other innocent people of their hard earned money by launching a fake and forged scheme which was never approved; that the petitioner is not to be extended extra ordinary concession of bail before arrest; that there are many other victims to the evil designs of the petitioner; that the petitioner with malice and malafide has defrauded the innocent citizens.

5. Heard, record perused.

6. Record reveals that the petitioner had launched the said Scheme on 07.01.2022 and on 28.02.2022 project was closed. The allegations leveled by the respondent in the instant FIR are that the petitioner called the respondent to his property office and asked him to sell files for him and further assured the complainant that the said society is approved from Punjab Housing and Town Planning Agency and NOC has also been obtained in this behalf. Whereafter, the complainant purchased 50 files from the petitioner and on having knowledge of the said society being fake and frivolous lodged the instant FIR

7. The record further reveals that all the files pertaining to the alleged fraud have already been taken into possession by the I.O of the case from complainant, record is further indicative of the fact that the superintendent of police Sadar zone Islamabad had conducted an inquiry in the instant FIR, wherein both the petitioner and the complainant were called and their statements were recorded.

8. The perusal of the statement of the petitioner recorded during the inquiry would reveal that a person by the name of Rao Taimoor Zafar who is the owner of Aladin Marketing was selling the fake files of the Housing Scheme (G.C. Homes). Without the approval of the petitioner. ‘

9. The perusal of the inquiry would reveal that there was an agreement between the petitioner and the respondent wherein the respondent was supposed to provide land which was in his possession was to be transferred to his name after payment of Rs. 25 billion as such, the complainant was not able to arrange the said amount and the owner of the land sold the land to Kingdom Valley, the complainant entered into agreement with Kingdom valley and has adjusted 650 files and has received installments accordingly.

10. The perusal of the inquiry would further reveal that Rao Taimoor who was the 3rd partner in G.C. Homes was selling files till March, 2022 whereas, the agreement between the parties ended on 28.02.2022. The Inquiry Officer (SP Police, Saddar Zone, Islamabad) has also concluded that the FIR has been lodged without proper probe into the matter and no cognizable offence is made out in the instant FIR.

11. The I.O of the case on query from the court stated that the petitioner has joined the investigation and all the documentary evidence has been taken into possession relating to the alleged transactions. The offences alleged in the FIR except for 468 PPC are bail-able in nature and the offence under Section 468 PPC does not fall within the ambit of prohibitory clause.

12. 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)

16. 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. Reliance is also placed on case law reported as **Zubair Abbas Taheem v. The State & others. (2017 SCMR 77).**

17. In view of above tentative assessment, petitioner has 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, later on, the prosecution would be at liberty to seek cancellation of his bail in due course in accordance with law.

18. Consequently, instant criminal misc. is **allowed** and ad-interim pre-arrest bail already granted to the petitioner vide order dated 30.06.2022 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.30,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

19. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

/Kamran/