

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Crl. Misc. No. 73736-B of 2021

M. Ali Farhan Hameed.

Versus

The State and another

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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17.05.2022

Mr. Abid Saqi, Advocate with the petitioner.
Hafiz Asghar Ali, DPG for the State with Hassan Javed Bhatti, S.P(Inv.) Saddar Division, Lahore.
Ch. Muhammad Tahir Nasrullah Warraich & Azeem Akram, Advocates for the complainant.

Through this petition under Section 498 Cr.P.C. petitioner Muhammad Ali Farhan Hameed has sought pre-arrest bail in case FIR No.889, dated 18.09.2021, in respect of an offence under section 406 PPC registered at Police Station, Mustafa Town, Lahore.

2. Precisely the allegation contained in the FIR lodged by complainant Afifa Irfan is that from 21.05.2020 to 03.12.2020 due to previous cordial relations with the petitioner, she had given an amount of Rs.78,80,000/- through Bank transactions as well as Rs. 1,000,0000/- in cash to him for the purchase of plots in Jaman Society, Baidian, Lahore at different times. On 20.12.2020, Nikah of petitioner's daughter was solemnized with brother of the complainant and before Nikah, a house was purchased from the amount of complainant's brother and half portion of said house was got transferred in the name of petitioner's daughter. After Nikah some differences arose between the daughter of the petitioner and complainant's brother and ultimately broke up the knot. Thereafter, complainant approached the administration of Jaman Society, who informed that no plot exists in her name. Petitioner usurped the amount

of the complainant while committing criminal breach of trust. Hence this FIR.

3. Contentions heard. Record perused.

4. Contents of FIR transpire that the alleged amount of Rs.1,78,80,000/- from 21.05.2020 to 3.12.2020 was given to the petitioner, whereas, the crime report/FIR was got registered on 18.09.2021, after the delay of 1 year & 15 days without explaining any sufficient reason, therefore, for the said ground, chances of petitioner's false implication with due deliberation after consultation cannot be ruled out. Reliance can be made upon case law titled as "Shakeel Ahmad vs. The State and another" (2012 MLD 1492), "Tahir Hussain v. The State and other" (2020 YLR 576) & "Khair Muhammad and another vs. The State through PG Punjab and another" (2021 SCMR 130).

5. After going through the narration of FIR and evidentiary material collected by the police and presented before this court, I have noticed that from the facts and circumstances of the case, offence under section 406 PPC is hardly attracted because there is no evidence on file that an amount of Rs. 1,78,80,000/- was entrusted to the petitioner. To better appreciate the controversy in dispute, it would be appropriate to have a glance over section 405 PPC, which is hereby reproduce for facilitation as under:-

"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 use 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 willfully suffers any other person so to do, commits "criminal breach of trust".

In the light of supra mentioned reproduced penal provision, it manifests that to attract the offence of criminal breach of trust punishable under section 406 PPC, the essential ingredients are:-

- i) There should be an entrustment by a person who reposes confidence in the other, to whom property is entrusted.
- ii) The person in whom the confidence is placed, dishonestly misappropriates or converts to his own use, the property entrusted.
- iii) 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.
- iv) Dishonestly uses or disposes of that property in violation of any legal contract, express or implied which he has made touching the discharge of such trust.

I have noted that in the narration of FIR, it has been mentioned that Afifa Irfan complainant handed over amount to the petitioner for the purchase of land for Farm House in her name but the petitioner neither purchased the land in the name of complainant nor returned her amount. It has been well settled by now that mere broken promise does not constitute the offence under section 406 PPC. I respectfully place reliance on the case of Shahid Imran versus The State and others (2011 SCMR 1614), wherein the Hon'ble Supreme Court of Pakistan, has observed as under:-

“According to the prosecution a sum of Rs. 30,00,000 had fraudulently been obtained by the petitioner from the complainant on the pretext that the petitioner wanted to set up a school of which the complainant, a retired headmaster, was to be appointed as its principal and for the said purpose the complainant was to invest a sum of Rs.30,00,000. It has been alleged in the F.I.R. that after obtaining that amount from the complainant the petitioner had neither set up any school nor had returned the above mentioned sum of money to the complainant and he had instead threatened the complainant with dire consequences. A perusal of the F.I.R. registered in this case clearly shows that the complainant had given the above mentioned sum of money to the petitioner by way of an investment in a business venture and not by way of entrustment. The law clearly recognizes a distinction between payment/investment of money and entrustment of money or property as in the

former case the amount of money paid or invested is to be utilized for some purpose whereas in the latter case that sum of money or property is to be retained and preserved for its return to the giver and the same is never meant to be utilized for any other purpose. Recognition of this distinction stands clearly reflected in many cases decided by different courts in the Indo-Pak sub-continent and a reference in this respect may be to the cases of State of Gujarat v. Jaswantlal Nathalal (AIR 1968 SC 700), Punjab National Bank and others v. Surendra Prasad Sinha (1994 PSC (Crl) 768), Shaukat Ali Sagar v. Station House Officer, Police Station Batala Colony, Faisalabad and 5 others (2006 PCr.LJ 1900), Ghulam Ali v. Javid and another (1989 PCr.LJ 507), Nga Po Seik v. Emperor (1917 Indian Cases 824) and Kornai Lal Dutta v. The State (AIR 1951 Cal 206). These precedent cases clearly show that a mere breach of a promise, agreement or contract does not ipso facto attract the definition of criminal breach of trust contained in section 405, P.P.C. and such a breach is not synonymous with criminal breach of trust without there being a clear element of entrustment therein which entrustment has been violated. Looked at from this perspective the allegation levelled against the petitioner regarding commission of an offence under section 406, P.P.C. surely calls for further probe at this stage.”

On Court’s query, learned Law Officer has frankly conceded that according to the facts and circumstances of the case, offence under section 406 PPC is not made out, *albeit* at the most section 420 PPC is attracted which is bailable in nature.

6. Learned counsel for the petitioner has drawn attention of this Court towards the fact that according to the contents of FIR, Afifa Irfan complainant is a working woman who is owner and Director Operations of Pacific Pharmaceuticals Company. Learned counsel has produced a copy of appointment letter which shows that the petitioner was appointed as Corporate Consultant, Training & Development in the company of complainant with monthly salary of Rs. 900,000/- on 15.01.2018 and his service was confirmed on 18.06.2018. Similarly, an appreciation letter was

issued by Pacific Pharmaceuticals Company on 28.05.2020 in favour of petitioner. Learned counsel for the petitioner has vehemently argued that so far as alleged amount of Rs.78,80,000/- was transferred in the account of petitioner through bank transaction is concerned, the same was paid as salary to the petitioner. He also annexed with this petition six salary slips through criminal miscellaneous application which manifest that Rs. 51,00,000/- was paid to the petitioner as salary. Learned counsel for the complainant has not produced any proof of handing over the cash amount of Rs.10,00,000/- to the petitioner and investigation in this regard is also silent.

Moreover, I have observed that matter between the parties was of family dispute because Nikah of complainant's brother namely Ramesh Umer was solemnized with Moona Farhan daughter of the petitioner on 20.12.2020 and an amount of Rs. 51,00,000/- was fixed as *Haq-ul-Mehr* out of which, Rs. 50,00,000/- was deferred dower. Similarly in the column No.17 of Nikah Nama gold ornaments weighing 34 tolas valuing Rs. 42,00,000/- were also given to the bride. It has also been mentioned in the FIR that before the Nikah, from the amount of complainant's brother, a house was purchased and half portion of said house was got transferred in the name of petitioner's daughter. Learned counsel for the petitioner also submitted that the amount alleged by the complainant in the narration of FIR allegedly handed over to the petitioner through cash; the said amount was used for the purchase of supra mentioned house.

Contrarily, learned counsel for the complainant argued with vehemence that complainant has no

concern with his brother and he himself is responsible for his acts and deeds. The amount mentioned in the crime report has no nexus with the complainant's brother.

It has also come on record that subsequently dispute arose between the complainant's brother namely Ramesh Umer and Moona Farhan, petitioner's daughter and now family suits are pending for adjudication between them. In the light of supra mentioned facts, it is clear that till arising the dispute between Ramesh Umer and Moona Fahan, complainant had not tried to set the machinery of law into motion. In this way, I have no hesitation to hold that the complainant has apparently tinged the family dispute into criminal one which is not warranted by law. Reliance is placed upon the following case laws titled as "Ghulam Ali vs The State and another" (2013 MLD 891) & "Muhammad Asim v. The State and another" (2020 P Cr. L. J 335).

7. The learned counsel for the complainant has argued with vehemence that the petitioner has failed to point out any *mala fide* or ulterior motive on the part of the complainant as well as police which are *sine qua non* for the confirmation of pre-arrest bail and these grounds are very much lacking in this case. I am not in agreement with the supra mentioned submission because it is not possible in every case to prove the same, however, these grounds can be gathered from the facts and circumstances of the case. A reference in this respect may be made to the case of "Shahzada Qaiser Arfat alias Qaiser vs. The State and another" (PLD 2021 SC 708) wherein it has been observed as under:-

"Malafide being a state of mind could not always be proved through direct evidence, and it was

often to be inferred from the facts and circumstances of the case.”

8. Although, it is a pre-arrest bail application and merits for grant of bail before arrest and after arrest are all altogether different but in a recent pronouncement of apex court of the Country in case titled as “*Khair Muhammad and another Vs. The State through P.G.Punjab and another*”(2021 SCMR 130) it has been held that while granting pre-arrest bail even the merits of the case can be touched upon. The relevant portion of the esteemed judgment of the Apex Court of the Country is reproduced as under:-

“...the concept of pre-arrest bail is exceptional, it has to be exercised sparingly. The purpose behind is to save innocent persons from false allegations, trumped up charges and malicious prosecution at the end of complainant party. In the salutary judgment of this Court reported as “*Meeran Bux v. The State and another*” (PLD 1989 SC 347), the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon....”

Similar view has been reiterated by the apex Court of the Country in the case titled as “*Sajid Hussain alias Joji Vs. The State*” (PLD 2021 SC 898).

9. The petitioner is previous non-convict, he has already joined the investigation and according to the investigating officer, the investigation of this case is complete and reportedly there is no misuse of concession of pre-arrest bail, therefore, the petitioner has made out a case for confirmation of pre-arrest bail. Even otherwise, offence under section 406 PPC does not fall within the prohibitory clause of section 497 Cr.P.C and no useful purpose would be served by sending him behind the bars mere at the wish of the complainant till his release on post-arrest bail after few days.

10. The epitome of above discussion is that there are sufficient grounds for the confirmation of the pre-arrest bail, resultantly, this petition is **allowed** and the ad-interim pre-arrest bail already granted to the petitioner vide order dated 25.11.2011 is hereby confirmed subject to his furnishing of fresh bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety, in the like amount to the satisfaction of the learned trial court.

11. Needless to mention that any observations made in the above order are tentative in nature and shall not influence the trial court in any manner.

(Muhammad Tariq Nadeem)
Judge

APPROVED FOR REPORTING

Judge