

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Bail Application No. S- 999 of 2019

DATED **ORDER WITH SIGNATURE OF JUDGE**

For orders on office objection.

For hearing of main case.

13.01.2020

Applicant Syed Yasir Ali Jaffari is present on interim bail.

Mr. Muhammad Ali Rajput, Advocate for applicant.

Mr. Muhammad Ishfaq, Advocate files power on behalf of complainant, which is taken on record.

Ms. Rameshan Oad, Asst. Prosecutor General.

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ABDUL MAALIK GADDI, J- Through this bail application, applicant Syed Yasir Ali Jaffari seeks pre-arrest bail in crime No.300 of 2019 registered U/S 489-F, 420 PPC at Police Station Kotri. Earlier, applicant had filed Cr. bail application before the trial court for grant of bail but the same was dismissed vide order dated 10.10.2019.

2. Precisely facts of the present case are that complainant is running a shop and had purchased sweet betel-nuts of Rs.663,000/- from applicant / accused. He paid amount of Rs.663,000/- to accused in advance, however, the applicant did not send him articles. On 25.07.2019 at 1.00 p.m. (noon), accused came at his shop and handed over him a post-dated cheque of said amount of Rs.663,000/- for dated 05.08.2019, in presence of PWs Ghulam Mustafa and Syed Wajid Shah. The applicant deposited the said cheque in his account at Allied Bank Ltd, Kotri, but the same was dishonoured with memo of "insufficient funds in drawer's account". Thereafter, complainant approached the applicant / accused for return of his amount, who kept him on hopes, therefore, he lodged instant F.I.R against him for offences U/S 489-F, 420 PPC.

3. Learned counsel for the applicant / accused argued that there is delay of two (02) months in lodging the F.I.R. However,

he admits the business relation in between the complainant and accused. The main thrust of his arguments is that case does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C and the dispute between the parties is of civil nature, therefore, he prays for confirmation of interim bail.

4. Learned A.P.G assisted by learned counsel for the complainant has opposed the bail application on the ground that delay in lodging of F.I.R is explained and the accused is involved in a case of forgery and cheating ; the accused is nominated in F.I.R with specific role therefore, he is not entitled for concession of extra ordinary relief of pre-arrest bail.

5. I have heard the arguments of learned counsel for the parties and perused the material available on record. It appears from the record that case has already been challaned and applicant / accused is no more required for investigation. The only allegation against the applicant is that he issued a cheque amounting to Rs.663,000/- and when the said cheque was presented for its encashment before the concerned bank, the same was bounced/dishonoured. It also appears that F.I.R is delayed by two (02) months. It is stated by learned counsel for the applicant that there was business transaction in between the parties and according to him, the applicant did not issue any cheque but the alleged cheque was misplaced and the same was misused by the complainant. However, it is yet to be determined at the time of trial whether the applicant had issued the alleged cheque to the complainant in a good faith or otherwise.

6. As observed above, the case has been challaned therefore, sending the applicant to jail would not serve the purpose as the case has already been sent to Model Court for its speedy trial and it is expected that the trial Court shall decide the same as early as possible. Besides, the punishment of the alleged offence also does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. In such circumstances, grant of bail to an accused is a rule and its refusal is an exception. There is no exceptional circumstance appear to with hold the bail to applicant / accused in this case. Record further reflects that applicant is first offender

and is not said to have been convicted in any other criminal case. In these circumstances, i have come to the conclusion that the case of applicant falls within the scope of Sub-section (2) of Section 497 Cr.P.C, as such, the interim pre-arrest bail already granted to the applicant vide order dated 15.10.2019, is hereby confirmed on the same terms and conditions.

7. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of.

8. Before parting, I would like to make it clear that if the applicant misuses the concession of bail in any manner, then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of bail without making any reference to this Court. Office is directed to communicate this order to the trial Court for information and compliance.

JUDGE

Fahad Memon
13.01.2020