

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

Cr.Bail.Appl.No.S- 72 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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02.03.2020.

Ms. Rameshan Oad, A.P.G. for the State.

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None present for complainant. Applicant is present on interim pre-arrest bail granted to him by this court vide order dated 31.01.2020. Today this bail application is fixed for confirmation or otherwise.

2. The allegation against applicant / accused is that he delivered two cheques amounting to Rs.6,78,000/- dated 15.04.2017 and Rs.6,78,000/- dated 15.07.2017 of HBL Tando Jam Branch to the complainant for encashment but when the said cheques were presented before the said Bank, the same were dis-honoured.

3. It is contended by applicant / accused that there is no reasonable ground to believe that he has committed the alleged offence; that he and the complainant were bosom friends and neighbourer and they were engaged in selling and purchasing of the vehicles; that applicant had purchased 35 china motorcycles from the complainant for total sale consideration of Rs.20,34,000/- and issued four cheques for security purpose; that both the parties cancelled the deal and applicant returned said 35 motorcycles to the complainant but complainant did not return the said cheques; that there is delay of more than 70 days in lodging the FIR without any explanation; lastly he has prayed for confirmation of interim bail.

4. It appears from the record that case has been challaned. Present applicant / accused is no more required for investigation. The whole case of the prosecution is based upon documentary evidence which is in possession of prosecution, therefore, no question does arise for tampering the same at the hands of applicant / accused. It is stated by applicant that the cheques were handed over to complainant in good faith but the same were used by complainant malafidely and there was a business transaction in between them. Under these circumstances, it is to be seen whether the incident has taken place in a fashion as stated by complainant in his FIR or otherwise. The

alleged incident took place on 11.10.2018 whereas the same has been lodged on 20.12.2018 after the delay of about two months for which no satisfactory explanation has been furnished by complainant and on this ground also the false implication of applicant / accused in this case with due deliberation could not be ruled out. It is stated by applicant that he has already compromised the matter with complainant however, no one has appeared on behalf of the complainant.

5. As observed above, case has been challaned and the present applicant / accused is charged u/s 489, 420, 34 PPC. Section 420 PPC is bailable whereas Section 489-F PPC though is not bailable but the punishment of said offence is not more than three (03) years. Thus it appears that the case of applicant / accused also does not fall within the prohibitory clause of Section 497 Cr.P.C. In such like cases, the Honourable Supreme Court in number of its pronouncements has granted bail to the accused and it has also been held that the cases in which offence does not fall within the prohibitory clause, grant of bail is a right and its refusal is an exception. No exceptional ground appears in this case to withhold the bail of the applicant.

6. In view of the above, learned A.P.G. extended her no objection if the bail of applicant is confirmed with direction to the applicant to appear before the trial court.

7. In view of above, instant bail application is allowed and the interim pre-arrest bail already granted to the applicant vide order dated 31.01.2020 is hereby confirmed on same terms and conditions with direction to the applicant to appear and face the trial before trial court.

8. 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 trial. It is also made clear that in case if during trial, applicant / accused misuses the concession of bail, the trial court would be competent to cancel his bail without making any reference to this court.

JUDGE