

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-682 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING.

08.09.2017.

Mr. Ghulam Nabi Jarwar, Advocate for applicant.
Mr. Shahid Ahmed Shaikh, D.P.G.

ORDER

ABDUL MALIK GADDI, J:- Applicant/accused namely *Nabi Bux Dero S/o Mir Muhammad* is present on interim pre-arrest bail granted to him by this Court vide order dated 17.08.2017. Today this bail application is fixed for confirmation or otherwise.

2. The facts as narrated in the FIR are that, applicant/accused was known to be complainant's friend. On 10.04.2017 the complainant alongwith his relatives Ameer Bux and Shoukat were sitting at their Otaq, when at about 1400 hours, his friend Nabi Bux (present accused) came there and requested the complainant that he is in dire need of amount of Rs.400,000/- (Four Lacs) and the same will be returned after some days. On such demand of the accused, the complainant handed over the said amount in presence of above named witnesses. Subsequently, the accused returned such amount to the complainant through Cheque No.39985791 of his Account No.58002200016481 of National Bank of Shahdadpur Branch dated 10.05.2017. The complainant then went to the Bank to get en-cashed the said cheque but it was dishonoured and such memo was issued by the Bank authorities. On dishonouring the said cheque, the complainant approached the accused, who asked him that no complaint be made and that he will pay due amount but the complainant was kept on false hopes. The complainant then filed application under Section 22-A Cr.P.C against the accused, which was allowed, hence the present F.I.R.

3. Learned Counsel for the applicant/accused *inter alia* contended that the applicant/accused has been falsely implicated in this case by the complainant due to extort money from him. He further submits that the FIR is delayed for

more than 03 months, which shows *malafide* on the part of the complainant as the FIR has been lodged after due deliberation and consultation. Learned Counsel further submits that the cheque in question was misplaced from the applicant/accused and such N.C was lodged by the Police of P.S Sarhari on 23.04.2017; that the story narrated by the complainant in the subject FIR is unbelievable and has been managed. He also submits that the alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C, as such, there is no likelihood of tampering with the prosecution case.

4. Learned Deputy Prosecutor General has opposed this bail application on the ground that the applicant/accused is nominated in the FIR with specific allegation to the effect that the applicant has cheated the complainant party.

5. I have given my anxious thoughts to the contentions raised at the bar and perused the case papers so available before me. .

6. It appears from the record that the incident took place on 10.04.2017, whereas, the FIR has been lodged on 13.07.2017 after the delay of about 03 months, for which no satisfactory explanation has been furnished, therefore, on this ground only false implication of the applicant/accused in this case cannot be ruled out. It appears from the record that there was friendship in between the applicant/accused and complainant and as per allegation the applicant/accused demanded Rs.400,000/- from the complainant, which were paid by him and when the complainant demanded such amount, the applicant/accused returned the same by issuing a cheque, as referred to above, which was dishonoured on account of insufficient amount in the account. It is the case of the applicant/accused that the cheque in question was misplaced from the applicant/accused and such N.C was lodged at P.S Sahrhari on 23.04.2017, therefore, on this ground it is the case of further inquiry, whether the applicant/accused has committed cheating with the complainant party or otherwise, which shall be determined at the trial. It is an admitted fact that challan has been submitted against the applicant/accused and the applicant/accused is no more required for further investigation. It appears from the record that the applicant/accused is appearing before the Trial Court regularly and it is yet to be seen whether the subject cheque was misused by the complainant party or otherwise, this facts requires evidence at the Trial.

7. Keeping in view the above facts and circumstances of the case, I am of the considered opinion that the punishment provided for such offence is three years or fine, therefore, adequate punishment in the shape of fine is also available in the provision. Even otherwise, the punishment does not come within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, the applicant has succeeded to make out a case for grant of bail. I am also fortified in my opinion by the dictum laid down by the Honourable Supreme Court of Pakistan in 1999 SCMR 2589, wherein it was held that offences involving lesser punishment of three years, the accused may be admitted to bail.

8. In view of what has been observed above, I have come to the conclusion that the applicant/accused has made out a case for his confirmation of bail. I, accordingly confirm this bail application on the same terms and conditions with direction to the applicant/accused to appear before the Trial Court to face the trial regularly.

Bail application stands disposed of.

JUDGE

Shahid