

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 430 of 2018

Aloo Mal S/o Coaith Mal		Applicant
Versus		
The State		Respondent

Mr. Tariq Hussain, Advocate for Applicant.
 Mr. Muhammad Hanif, Advocate for Complainant.
 Mr. Abrar Ali Khichi, DPG for the State.

ORDER

Omar Sial, J: Aloo Mal the applicant has sought pre-arrest bail in crime number 95 of 2018 registered under sections 420 and 489-F P.P.C on 26-2-2018 at the Darakhshan police station. Earlier, his pre-arrest bail application did not find favour with the learned District & Sessions Judge, South at Karachi who dismissed it on 15-3-2018

2. Ramesh Kumar, on 26-2-2018 registered the aforementioned F.I.R. He recorded that he is a trader of wheat and that on 3-3-2017 he sold wheat amounting to Rs. 6,900,000 to the applicant. The applicant gave Ramesh a cheque in the amount of Rs. 3,000,000 drawn on the Khayaban-e-Ittehad Branch of the Sindh Bank in Karachi. The date of issuance of the cheque was not stated. It was also recorded by the complainant that the cheque was issued, not by the applicant, but by one Vashno Mal, however, the same was given to the complainant by the applicant.

3. I have heard the learned counsel for the applicant, the learned counsel for the complainant as well as the learned D.P.G and examined the record available with their able assistance. My observations are as follows.

4. One of the ingredients required to be fulfilled for section 489-F P.P.C. to come into play is that the cheque that is dishonored should have been given for the payment of a loan or satisfaction of an obligation. Both, the learned counsel for the complainant and the learned D.P.G., concede that at the moment there is no evidence on record which would prima facie evidence that the cheque in question was indeed given for the

payment of a loan or satisfaction of an obligation. Prima facie it appears odd that a trader in wheat would give wheat amounting to such a substantial amount to another without obtaining any acknowledgement of the same. This aspect will have to be proved at trial. Further, admittedly the cheque in question has not been issued by the applicant but by one Vashnu Mal. The nexus of the applicant with the cheque in question therefore will also have to be proved in trial. An offence under section 489-F P.P.C, though a non-bailable offence, carries a potential sentence of up to 3 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C whereas an offence under section 420 P.P.C carries a potential sentence of 7 years and also falls within the non-prohibitory clause of section 497 Cr.P.C. Whether or not there was a sale of wheat to the applicant and whether or not the same was effected through cheating by the applicant are questions too that have to be determined at trial. At this stage, the prosecution does not appear to have sufficient evidence which would prima facie establish the truth of the allegations made by the complainant. The case of the applicant requires further enquiry. In the circumstances, the learned counsel's argument that the sole purpose of this case which has been filed with malafide is to humiliate the applicant because of business disputes cannot be conclusively ruled out at this stage.

5. Above are the reasons for my short order of 16-4-2018 in terms of which the interim pre-arrest bail granted to the applicant on 19-3-2018 was confirmed on the same terms and conditions.

JUDGE