

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 128 of 2023

For hearing of Bail Application.

Applicant/ Accused : Muhammad Waqar Malik son of Muhammad Ishaq, through Mr. Naseer Ahmed Panhwar, Advocate.

Complainant : Abdullah son of Abdul Wahab Bhutto through Mr. Ashfaq Ahmed Shah, Advocate.

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Date of hearing : 17-04-2023

Date of order : 17-04-2023

*FIR No. 1374/2022
U/s: 489-F PPC
P.S. Sachal, Karachi.*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/ Accused seeks post-arrest bail in the aforesaid crime after the same had been declined by the Additional Sessions Judge-II, Malir, Karachi by order dated 05-10-2022.

2. As per the FIR lodged on 20-08-2022, the Complainant had entered into an agreement with the Applicant on 23-09-2021; where under the Complainant invested from time to time a sum of Rs. 1 crore in the pharmaceutical distribution business of the Applicant; that when the Complainant had demanded his investment back, the Applicant and his partner gave him certain cheques; that the cheque given by the Applicant was of Rs. 10,00,000/- which was dishonored on 23-06-2022 for insufficient funds.

Heard the learned counsel, the APG Sindh and perused the record.

3. The cheque in question dated 20-05-2022 was first presented for encashment on 27-05-2022 then again on 23-06-2022 when it was returned for insufficient funds, and yet the FIR was lodged on 20-08-2022 with a delay of nearly two months. Learned counsel for

the Complainant submits that the parties were trying to settle the matter and hence the delay; whereas, learned counsel for the Applicant submits that parties had in fact settled the matter when the Applicant transferred his pharmaceutical distribution business and its assets to the Complainant, but the Complainant nonetheless proceeded to present the cheque for encashment with *malafides*.

4. In the present circumstances, the question whether the underlying consideration of the cheque had been received by the Complainant by way of transfer of assets of the Applicant's pharmaceutical business is a question of fact that has yet to be ascertained by the trial Court. Therefore, the case against the Applicant calls for further enquiry. The punishment for the offence alleged also does not fall within the prohibitory clause of section 497 Cr.P.C. Thus, the grant of bail is the rule and its refusal an exception. In the circumstances, the Applicant is granted bail subject to furnishing solvent surety in the sum of **Rs. 200,000/- [Rupees Two Hundred Thousand Only]** alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

JUDGE

SHABAN*