

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-426 of 2015

Muhammad Din

Versus

The State

Date of hearing	20-03-2017
Date of order	20-03-2017
The applicant	Muhammad Din Through Mr. Ghulam Shabbir Bhutto, Advocate
The Complainant	Zahid Hussain Through Mr. Moizam Ali Lashari, advocate
Respondent	The State Through Mr. Saleem Akhtar, Learned Additional Prosecutor General.

O R D E R

Mohammad Karim Khan Agha, J. By this order I propose to dispose of the application for pre-arrest bail moved by the applicant Muhammad Din (the applicant), who has been charged with offences under Section 489-F and 506/2 P.P.C under crime No.47/2015 lodged at Police Station Kotdiji on 23.03.2015.



2. The brief facts of the case as per F.I.R. are that the applicant had given a cheque of Rs.500,000/- to the complainant (Zahid Hussain) in respect of the payment of diesel which the applicant had received from the complainant's petrol pump and when the complainant went to the bank to encash the aforesaid cheque it was dishonoured. Thereafter the complainant used his best efforts to recover the amount owed to him from the applicant after the cheque was

dishonored but failed in his attempts to make recovery from the applicant especially as the applicant threatened the complainant with a pistol to stop asking for payment. Under these circumstances the complainant finally registered the F.I.R. in respect of the aforesaid action of the applicant under Section 489-F and 506/2 P.P.C.

3. After usual investigation, the challan was filed and the matter is now proceeding before the trial court.

4. Learned counsel for the applicant submitted that although it was true that the cheque was bounced but thereafter he had paid the amount in cash to the complainant and pointed out a receipt dated 15.02.2010 in this respect and as such he did not owe any further money to the complainant on account of the bounced cheque. He further submitted that the extremely long delay in filing the F.I.R. amounted to malafide on the part of the complainant; that the maximum sentence is three years imprisonment on conviction; that the applicant is not required for further investigation and that the prosecution case against him is false and he is completely innocent and that only the I.O is left to be examined and as such he is entitled to the confirmation of his pre arrest bail.

5. In support of his contentions, learned counsel placed reliance on the cases of **Mian Allah Dita V State** (2013 SCMR 51), **Muhammad Ashraf V State** (2015 P.Cr.L.J 1050) and **Sabir Ahmed V State** (2010 YLR 760).



6. Learned Additional Prosecutor General has opposed the confirmation of the pre arrest bail granted by this Court to the applicant. He submitted that since it was an admitted fact that the cheque has bounced before the aforesaid cash payment the offense has been proven and as such there is sufficient material to

connect the applicant to the commission of the offense. In addition no malafide has been shown on the part of the complainant.

7. Learned counsel for the complainant has pointed out that the pre-arrest bail of the applicant has already been dismissed by the trial court on 01.06.2015 in the following terms.

"I have also given my careful consideration to the submissions made by the learned counsel for accused, learned DDPP for the State, who is assisted by learned counsel for the complainant and have gone through the material available on the record. It appears that F.I.R. has been registered against the accused as the accused issued a cheque to the complainant party and same was also dishonoured from the same bank. The contentions of the applicant/accused is that, who paid the same amount to the complainant party but he has not get returned the same cheque from the complainant party but no any legal notice issued to the complainant for returning the same cheque. The record shows that applicant/accused prior to this had issued cheques to the complainant party and same were also dishonoured from the bank and complainant party filed such summary suit against the applicant/accused, which was decreed against him, which shows that he is habitual in nature and issued the same cheque dishonestly to the complainant party and he has not claimed for the same cheque, as manipulated or forged one by other side. The delay if any for the same cheque has been explained as there was business dealing with the applicant/accused and accused kept the complainant party on false hopes and thereafter this cheque was presented by the complainant in the bank and same was dishonoured. The applicant/accused has to show malafide on the part of complainant in case of pre-arrest bail but the accused has failed to do so and it is settled law that if he fails then he would be disentitled for the confirmation of pre-arrest bail. The ingredients of pre-arrest bail are quite different from the post-arrest bail. In the instant case, the accused has prima facie failed to show any malafide on the part of complainant and mere offence does not fall within the prohibitory clause, does not mean that accused can claim bail as a matter of right, therefore, I am of the considered view that applicant/accused has failed to make out the case for grant of extraordinary relief of confirmation of pre-arrest bail, hence, an interim pre-arrest bail already granted to applicant/accused is hereby recalled and instant bail application stands rejected."

8. Learned counsel for the complainant further submitted that there has been no malafide on the part of the complainant and that the applicant was habitual



defaulter due to above reasons. He has submitted that applicant's interim pre-arrest bail should be recalled.

9. I have considered the arguments of the learned counsel for the applicant, State and the learned counsel for complainant, perused the record and considered the relevant case law cited by the learned counsel for the applicant.

10. At the outset it is made clear that I have only made a tentative assessment of the material before me and that this bail order shall have no effect on the trial proceedings which shall be decided by the learned trial court on merits based on the evidence before it.

11. The case law cited by the applicant in my view is of little , if any, assistance to him. Be that as it may it would appear that the cheque was dated 07.07.2008 and was dishonoured on 07.07.2008 (on the same day) and therefore prima facie there appears to be sufficient material to connect the applicant with the commission of offence. However, I have observed that the F.I.R. was lodged after a lapse of seven years after the date of the dishonoring of the cheque. In my view such a long delay of around 7 years between the dishonoring of the cheque and the lodging of the F.I.R. which was not adequately explained tends to show that there has been some malafide on the part of the complainant in registering the F.I.R. Furthermore, since the maximum sentence is only three years and the case falls within the non-prohibitory clause, it is settled law that bail may be given as a right unless exceptional circumstances exist. Reference in this respect is made to the case of **Tariq Bashir V State** (PLD 1995 SC 34). It also appears that the case has almost been concluded and only the L.O remains to be examined. The applicant is regularly attending the trial proceedings and he is no longer required for the investigation and the amount claimed appears to be relatively small (i.e. 5 lacs).



12. Based on the particular facts and circumstances of this case I am of the view that it would meet the ends of justice if the pre arrest bail granted by this Court to the applicant was confirmed. Thus, the interim pre-arrest bail granted to the applicant/accused by this court is hereby confirmed subject to the applicant furnishing an **additional** solvent surety in the sum of Rs.500, 000/- (five lacs only) and P.R bond in the like amount to the satisfaction of the Additional Registrar of this court.

13. The trial court however is directed to complete the trial of the applicant within 3 months of the date of this order and if any delay is caused in the trial proceedings by the applicant the complaint and/or the State may apply to this Court for the cancellation of the pre arrest bail granted to the applicant. The office is directed to immediately send a copy of this order to the concerned trial court for compliance.

14. This criminal bail application stands disposed of in the above terms.