

# IN THE HIGH COURT OF SINDH AT KARACHI

Before:

**Mr. Justice Mohammed Karim Khan Agha**

Pre-arrest Bail Application No.486 of 2016

Muhammad Fahad Siddiqui and Nadim Akhtar Siddiqui

Vs.

The State

Date of hearing:	12-06-2017.
Date of Order	12-06-2017.
Applicants/Accused:	Through Syed Shafaqat Ali Shah Masoomi, Advocate.
Respondent:	Through Mr. Zahoor Shah A.P.G.

## ORDER

**Mohammad Karim Khan Agha, J.** By this order I propose to dispose of the pre-arrest bail application moved by the applicants Muhammad Fahad Siddiqui and Nadim Akhtar Siddiqui (the applicants), who have been charged with offences under Section 489-F/34 P.P.C under crime No.95/2016 lodged at Police Station Ferozabad.

2. The allegation against the applicants/accused according to the contents of the FIR are that the complainant invested his money in the business of Medicine of the applicants/accused who are relatives and when the complainant demanded his money back the accused Fahad gave him a cheque of Rs.350,000/- of Habib Metropolitan Bank SMCHS and the same was bounced on 30.04.2015.

That the applicant/accused Nadeem Akhtar Siddiqui gave him a cheque of Rs.34,00,000/- of Allied Bank Sindhi Muslim Society which bounced on 03-02-2015. Under these circumstances the complainant registered the F.I.R. in respect of the aforesaid action of the applicants under Section 489-F/34 P.P.C on 18-03-2016.

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

4. Parties heard. In essence learned counsel for the applicants argued that the applicants/accused interim pre arrest bail granted by this Court vide order dated 07-04-2016 should be confirmed on numerous grounds. Learned State counsel opposed the confirmation of the applicant's pre arrest bail on the grounds that the pre arrest bail application of the applicants had earlier been dismissed by the trial court vide dated 05-04-2016 which found that there was no malafides on the part of the complainant which was an essential ingredient for the grant of pre arrest bail.

5. I have considered the arguments of the learned counsel for the applicants, the State, perused the record and considered the relevant case law.

6. In essence the case revolves around the bouncing of two cheques of a combined amount of approximately RS 69 lacs which attracted S.489 (F) PPC for which the applicants are being tried.



7. I am of the considered view that the applicants pre arrest bail should be confirmed for the following reasons; that there appears to be an element of malafide by the complainant in filing the FIR against the applicants since the FIR has been filed almost a year after the cheques were bounced without any explanation and in addition it appears that the complainant and his counsel have not been present on the last 3 dates of hearing before the trial court and the trial court on two separate occasions has issued non bailable warrants of arrest against the complainant to ensure his attendance before the trial court which in my view again is another indication of the malafide conduct of the complainant as it appears that he has no serious interest in pursuing his own matter and simply wants to keep the case hanging over the heads of the applicants, even learned State counsel, when asked by this court, conceded that such conduct by the complainant amounted to malafides and even today the complainant and his counsel are called absent before this court which again gives further weight to the impression that the complainant wants to string this matter out through malafide conduct thus in my view I am satisfied that the malafide of the complainant has been made out for the purposes of the grant of pre arrest bail. Turning to the merits of the application; that in a similar case pending before the IV Additional Sessions Judge Karachi West the applicants have been granted pre arrest bail in an FIR arising out of an offense under S.489 (F) filed by the same complainant so to an extent the rule of consistency may be considered; that the

applicants are no longer required for investigation so their arrest would not serve any useful purpose; that the applicants have been regularly attending the court proceedings likewise again their arrest would not serve any useful purpose; that no evidence has come on record that the applicants are habitual offender of such types of crime as no conviction against them for an offense under S.489(F) has been brought on record; that the offense does not fall within the prohibitory clause and thus as a rule in such cases as laid down in the case of **Tariq Bashir V State** (1995 SCMR 34) the grant of bail is a right unless exceptional circumstances exist and in this case in my view exceptional circumstances are lacking.

8. Accordingly, based on the particular facts and circumstances of this case, both the applicants pre-arrest bail is confirmed on the same terms and conditions as it was granted by this court vide order dated 07-04-2016.

9. Needless to say that this order is only of a tentative nature and shall have no bearing on the outcome of the trial which shall be decided on merits by the trial court based on the evidence before it.

10. These are the reasons for my short order of even date.

11. The application stands disposed of in the above terms

Dated: 12-06-2017