

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No.8-293 of 2021

Atta Muhammad Khoso

V/S

The State

Applicant: Through Ms. Ghulam Khadija, Advocate

State: Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing: 06.09.2021

Date of Decision: 06.09.2021

ORDER

OMAR SIAL, J.- Atta Muhammad son of Muhammad Bux Khoso, the applicant, has sought post arrest bail in Crime No.21 of 2021, registered at Police Station Ali Goharabad for offence under section 489-F P.P.C. Earlier his application seeking bail was dismissed on 19.06.2021 by the learned III-Additional Sessions Judge, Larkana.

2. Brief background to the case is that the aforementioned F.I.R. was lodged by Abdul Ghafar Magsi on 16.05.2021, regarding an offence which has occurred on 05.03.2021. He narrated that the applicant is in the business of trading tractors; and, that on account of some trading between him and the applicant, an amount of Rs.1,990,000/- was owned by the applicant through the complainant. The applicant issued a cheque for his amount, which when presented at the bank's counter was dishonoured on account of insufficient funds in the respective bank account.

OS

3. I have heard learned counsel for the applicant as well as learned Additional Prosecutor General. Learned counsel for the complainant remained absent and in fact on previous date sought adjournment. My observations and findings are as follows:

- The learned Additional Prosecutor General confirmed that there is no evidence on the police file, which *prima facie* shows the alleged transaction between the complainant and the applicant. He also confirmed that there is no explanation on the police file as to why a two month delay was made in lodging the F.I.R. While the delay in filing of the F.I.R. and its impact on the prosecution case is a question that will have to be determined at the trial, at this stage malafide on the part of the complainant to use criminal proceedings as an arm twisting tactic to settle business disputes cannot be conclusively overruled.
- One of the important ingredients of the evidence under section 489-F P.P.C is that the cheque in question should have been issued for the satisfaction of a loan or fulfillment of an obligation. As mentioned above, at this stage, there appears to be only the statement of the complainant in this regard, which it appears is not supported by any documentary evidence, which would corroborate his allegation.
- I also find that an amount of Rs.1.9 Millions was given by the complainant to the applicant without recording the same in any manner whatsoever odd for a businessman to do.

Similarly, whether a cheque was issued dishonestly is also a question which will have to be decided at trial after adducing evidence. Suffice to say that at the moment, the case of applicant is one of the further enquiry.

- The offence under section 489-F P.P.C. carries a potential sentence upto three years and although non-bailable, falls within the non-prohibitory clause of section 497 Cr.P.C.

4. Keeping the principle enunciated by the Honourable Supreme Court of Pakistan in the Tariq Bashir case and also keeping in mind that there are no exceptional and extraordinary reasons which have been demonstrated by the learned Additional Prosecutor General, there appears to be no reason to deny the applicant bail.

5. Above are the reasons of short order passed earlier today.

 6/9/21
JUDGE

Manzoor