

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
Cr.Bail Appln.No.S-223 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

**25-05-2017**

Mr. Aijaz Ali Bhutto, Advocate a/w applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.

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**ABDUL MAALIK GADDI, J-** Applicant is present on interim bail granted to him by this Court vide order dated 14.3.2017 and today this bail application is fixed for confirmation or otherwise.

2. Facts of the case need not be reiterated here as the same have been stated in the memo of bail application.

3. It is stated by learned counsel for applicant that there is delay of about 26 days in lodging the FIR and such delay has not been explained properly and satisfactorily; that the complainant who is nephew of one Muhammad Ayoub son of Islamuddin against whom the present applicant / accused had filed criminal miscellaneous application u/s 22-A & B Cr.P.C has also obtained an order for registration of the FIR against said Muhammad Ayoob from the concerned Justice of Peace; that in order to take revenge from the applicant, the instant crime has been lodged; that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C.

4. Learned A.P.G submits that in this matter challan has been submitted and charge has been framed. .

5. Perusal of record shows that present applicant has filed Criminal Misc.Application No.140 of 2017 against the nephew of the complainant and the learned Additional Sessions Judge / Ex-Officio Justice of Peace Shaheed Benazirabad though pass order for registration of the case, but no FIR has been registered against the nephew of the complainant so far.

6. I have gone through the case papers with the assistance of learned counsel for the parties and come to the conclusion that there appears dispute in between the parties over business transaction and it is yet to be

determined at the time of trial whether cheque so bounced was malafidely issued to the complainant or not. Even otherwise offence under which present applicant has been booked does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. Further, nothing is available on record to show that the present applicant/accused is previously convicted or he is disparate, dangers and hard and criminal. Learned A.P.G in view of the above has opposed this bail application, but is not able to controvert the above factual and legal position.

7. In view of above, I am of the opinion that the punishment provided for such offence is three years or fine, therefore an adequate punishment in the shape of fine is also available in the provisions, even otherwise punishment does not come within prohibitory clause of section 497 Cr.P.C, therefore applicant has succeeded to make out a case for confirmation of bail. I am also fortified in my opinion by the dictum laid down by the Honourable Supreme Court in 1999 SCMR 2589, wherein it was held that offence involving lesser punishment of three years, the accused may be admitted to bail, therefore the interim pre-arrest bail granted to applicant/accused is hereby confirmed on same terms and condition.

JUDGE