ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Bail Application No.S-695 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE

For hearing.

15.09.2017.

> Mr. Farhad Ali Abro, Advocate alongwith applicant.
> Mr. Shahid Ahmed Shaikh, D.P.G for the State.
> Mr. Wali Muhammad Khoso, Advocate files power on behalf of the complainant, which is taken on record. Complainant is also present in person.
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ABDUL MAALIK GADDI,J- Applicant/accused is present on interim pre-arrest bail granted to him by this Court vide order dated 22.08.2017. Today this bail application is fixed for confirmation or otherwise.

2.   Facts of the prosecution case are that on 29.7.2018 at 1700 hours complainant Syed Muhammad Arshad lodged F.I.R. at police station A-Section, Latifabad Hyderabad stating therein that he entered into rent agreement with regard to House No.C/45, Block-A Unit No.8 Latifabad, Hyderabad. As per rent agreement, the accused had agreed to rent out his aforesaid house to the complainant, whereby he received Rs.600,000/- as advance from the complainant while rent of above said house was fixed at Rs.4000/-per month and possession of the rented premises was handed over to the complainant. The accused get 2/3 days from the complainant for the purpose of colouring in the house, but instead of handing over the possession of the rented premises to the complainant, the accused rented out the said house to one Asghar and obtained Rs.700,000/- in advance from him as well as handed over the possession to him. The complainant approached to the accused, who disclosed that the said house had rented out to Asghar for two months. In the meantime, the accused obtained an additional amount of Rs.100,000/- as loan from the complainant for the purpose of colouring of the house and issued one cheque bearing No.10015152 of Rs.100,000/- of Bank Al-Habib Unit No.11 Latifabad Hyderabad in favour of the complainant, which however, on presentation was dishonoured due to

`insufficient` funds. Thereafter, the complainant moved application in the Court and after getting order from the Court, he appeared at police station and lodged F.I.R.

3.   It is stated by the learned counsel for applicant that the applicant is innocent and case has been registered due to enmity, besides, according to him, case has been challaned and this applicant/accused is no more required for further investigation. He further submits that due to dispute over rented premises, the blank cheque was issued to the complainant party, but it was misused by the complainant just to implicate the applicant in this case. He further submits that the dispute in between the parties is of a civil nature and it is yet to be determined at the time of trial whether the applicant had issued cheque in favour of the complainant party and the same was used by complainant malafidely. He further submits that punishment of the offence for which, the applicant/accused has been booked in this case does not fall within prohibitory clause of section 497, Cr.P.C, as such, he has prayed for confirmation of interim bail.

4.   Learned D.P.G. assisted by learned counsel for the complainant has opposed this bail application on the ground that name of the applicant/accused is appearing in the F.I.R. with specific allegation of cheque bearing No.10015152 of Rs.100,000/- of Bank Al-Habib Unit No.11 Latifabad issued by the applicant/accused in the name of complainant has not been encashed and the same was dishonoured, therefore, according to them, the applicant is involved in a case of cheating, hence he is not entitled for confirmation of bail.

5.   I have given my anxious thoughts to the contention raised at the bar and have gone through the police papers so available before me.

6.   It is an admitted position that the case has been challaned and the applicant/accused is no more required for investigation. The whole case of the prosecution is based upon documentary evidence, which is in possession of the prosecution, therefore, there is no question does arise for tampering the same at the hands of applicant/accused. It is the case of the applicant that there is dispute in between the parties over rented premises, therefore, the blank cheque was issued to the complainant party, who due to malafide

intention misused the same after filling the amount just to implicate the applicant and pressurize him in this case. The dispute appears to be in between the parties is of a civil nature and it is yet to be determined at the time of trial whether the applicant/accused had issued a cheque to the complainant with bad intention or otherwise, this fact requires evidence.

7.   Keeping in view the above facts and circumstances of the case, I am of the considered opinion that the punishment provided for such offence is for three years or fine, therefore, adequate punishment in the shape of fine is also available in the provision. Even otherwise, the punishment does not come within the ambit of prohibitory clause of section 497, Cr.P.C, therefore, in the circumstances grant of bail is a rule and refusal is an exceptional as held by superior Courts in many cases and no exceptional circumstance has been pointed out in this case by learned D.P.G or learned counsel for the complainant to withhold the bail of the applicant. I, accordingly in view of the above, confirm the interim order already extended in favour of the applicant on the same terms and conditions with direction to the applicant to appear before the trial Court and face the trial.

8.   Since it is a case of cheating/dishonesty on the part of the applicant, therefore, trial Court is directed to expedite the matter and decide the case within a period of two months after receipt of this Court. It is observed that no unnecessarily adjournment shall be granted to either side and compliance report be submitted to this Court through Additional Registrar.

9.   Before parting with this order, I would like to make it clear that the observations made herein above are tentative in nature and shall not affect the merits of the case.

        The bail application stands disposed of in the above terms.

                                                                JUDGE.

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