

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.
 Cr. Bail Applications No.S-654 and 835 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

21.09.2017.

Mr. Abdul Hafeez Daudani, Advocate alongwith applicants.
 Mr. Shahid Ahmed Shaikh, D.P.G for the State.
 None present for the Complainant though served.

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ABDUL MAALIK GADDI,J- By this common order, I intend to dispose of above two bail applications, as the same have been arise out of common order passed by learned trial Court dated 06.8.2016 and also arise out of same crime bearing No.107/2016 under sections 489-F, 420,506(2) and 34, PPC at Police Station, Qasimabad, Hyderabad.

2. These applicants/accused are present on interim pre-arrest bail granted to them by this Court vide orders dated 23.08.2016 and 05.10.2016 respectively. Today these bail applications are fixed for confirmation or otherwise.

3. The applicants/accused are charged with the allegation that complainant Tarique Masroor had given an amount of Rs.32,40,000/- through cheque to applicant/accused Mumtaz Ali Mangi and his sons to invest in the business of property in presence of witnesses Shoukat Ali and Shafi Qurban and such agreement was also reduced into writing which was signed by complainant, Farhan Mangi, Mumtaz Mangi with terms that 10% profit will be given to complainant, but no profit was given to complainant as such said agreement did not remain intact. On repeated demands of complainant for his money, accused Mumtaz issued him cheque bearing No.115756822534 for Rs.500,000/-dated 25.4.2016 which he deposited in MCB Saddar which was dishonoured on 26.4.2016. Complainant approached the accused Mumtaz Mangi, informed him about the dishonor of the cheque, demanded his money but accused hurled him abuses and his sons Farhan Ali, Farman Ali and their friend Zahid Hussain Mughal alias Agha threatened them and on 3.7.2016 Mumtaz Mangi asked the

complainant to come towards his house to receive his money and when at about 6.00 pm complainant reached there where applicants/accused met him and threatened for murder on the point of pistols.

4. It is stated by the learned counsel for applicants that the applicants are innocent and case has been registered due to enmity, besides, according to him, the complainant is acted malafidely by leveling false allegations and no such incident was occurred. There is dispute over the plot which is of a civil nature, but complainant malafidely converted it into criminal litigation and F.I.R. is delayed by one day and no cogent explanation has been given by the complainant in F.I.R. The alleged offence does not fall within prohibitory clause and there is serious apprehension of malafide arrest of the applicants/accused at the hands of police. He submitted that complainant is investor and he entered into compromise and returned the earlier cheques and with ulterior motive number of false F.I.Rs have been lodged against the applicants/accused to influence through local police. He further submits that applicants/accused are regularly attending before the trial Court and they never misused the bail. He further submits that co-accused Zahid Hussain has been granted bail by the learned trial Court on almost same allegation, therefore, according to him, the applicants are also entitled for the same treatment.

5. Learned D.P.G. for the State has opposed this bail application on the ground that the names of applicants/accused are appearing in the F.I.R. with specific allegation that accused Farhan Ali issued a cheque to the complainant, which was dishonoured malafidely, thus, according to him, he has committed cheating with the complainant, whereas, co-accused are his accomplices.

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

7. It appears from the record that there is dispute in between the parties over business transaction and is of a civil nature, as apparently and tentatively complainant converted it into a criminal litigation and F.I.R. is delayed by one day, for which, no cogent explanation has been given by the complainant in the F.I.R. The allegation against the applicant Farhan Ali is

that he issued a cheque in the name of complainant, which was dishonoured and it is yet to be determined at the time of trial whether the cheque allegedly given by the applicant/accused Farhan Ali to the complainant was misused by the complainant just to rope him, his father and brothers in this case or otherwise, this fact requires evidence. Co-accused Zahid Hussain has been granted post arrest bail by the trial Court on almost same allegation, therefore, following the rule of consistency, these applicants are entitled for the same relief. Besides this it appears from the record that applicants/accused are appearing before the trial Court regularly and the offence for which, present applicants/accused are involved are either bailable or their punishment do not fall within prohibitory clause of section 497, Cr.P.C. It is an admitted position that case has been challaned and the applicants/accused are 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 applicants/accused.

8. 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 to withhold the bail of the applicants. I, accordingly in view of the above, confirm the interim order already extended in favour of the applicants on the same terms and conditions with direction to the applicants to appear before the trial Court and face the trial.

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.

These bail applications stand disposed of in the above terms.