

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

Cr. Bail application No.S- 704 of 2017

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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- 1- For orders on office objections
- 2- For Hearing.

12.09.2017.

Syed Munawar Ali Shah Advocate for applicant

Mr. Shamshad Ali Narejo Advocate has filed Vakalatnama on behalf of complainant.

Syed Meeral Shah Bukhari APG.

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ABDUL MAALIK GADDI: applicant/accused is present on interim pre-arrest bail granted to him by this court vide order dated 24.8.2017. Today this bail application is fixed for confirmation or otherwise.

2- The allegations against applicant/accused are that complainant Muhammad Rafique Khatak gave Rs.375,000/- to applicant/accused to send his son namely Muhammad Abbas to Dubai and he sent him to Dubai but did not get the work for son of complainant and kept him on a room for four months. It is further alleged that son of complainant returned back to country, applicant/accused received more amount of Rs.100,000/- and due to failure on the part of applicant/accused to fulfil terms and conditions he issued cheque No.29110692 of Rs.125,000/- of NIB Bank Market Branch but the same was dishonoured on presentation before bank. Thereafter complainant alongwith Muhammad Bilal approached applicant/accused, who issued threats then he filed application whereupon applicant/accused issued another cheque No.01176854 on 05.5.2017 as security amounting to Rs.125,000/- of Askari Bank Risala Road Hyderabad but same was too dishonoured.

3- Learned counsel for applicant/accused contended that the applicant/accused is innocent and has falsely been implicated in this case. He further contended that there is delay of about 06-months in registration FIR, for which no plausible explanation is furnished by the complainant. He has contended that there is dispute between the parties, which is civil in nature but applicant/accused malafidely converted the said dispute into criminal litigation. He contended that applicant/accused maintained a technical services company at Dubai and son of applicant was issued Visa for carried out work in Dubai as labourer in the month of May 2016 and he was issued resident identity card by the Dubai State but son of complainant with his consent returned. He contended that as per terms and conditions, the employees after completing, "Aqama" eligible for one month leave with full pay and prior to completion of the period, the company is not responsible to pay salary of the employees and son of complainant obtained leave for one month and did not return back to join his duty. He contended that applicant/accused approached the son of complainant who gave time for joining but failed to join while complainant issued threats to applicant/accused for payment of salary and in lieu thereof, applicant/accused issued cheques in question as security and help towards salary but son of complainant did not join the work. He contended that complainant cooked a false story. Per learned counsel that how it is possible that the complainant paid Rs.100,000/- more when transaction has been completed and applicant/accused has fulfilled his obligations, hence this point is clearly showing doubt in the case of complainant He contended that all the PWs are interested witnesses and no independent person is cited as witness of alleged incident. He Further contended that no incident took place and applicant/accused is involved in this case falsely, therefore, he is entitled for confirmation of bail.

4- Learned APG duly assisted by the learned counsel for complainant has vehemently opposed the bail application and contended that applicant/accused is named in the FIR and specific role of issuing dishonoured cheque is assigned to him in commission of alleged offence. He has further contended that applicant/accused has

committed cheating with complainant, therefore, he is not entitled for grant of bail.

5- I have given my anxious thought to the arguments of learned counsels for the parties and have gone through the police papers made available before me.

6- It is an admitted position that case has been challaned, the applicant/accused is no more required for any investigation. This case is based upon the documentary evidence which is with the prosecution, therefore, no question does arise for tampering in the evidence. It appears from the record that alleged incident took place on 16.12.2016 but FIR has been registered on 14.6.2017 after delay of about six months for which no satisfactory explanation has been furnished, therefore, it is yet to be determined at the time of trial that whether this FIR has been filed with due deliberation and consultation, this fact requires evidence. The punishment provided for the offence is three(3) years or fine which does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, grant of bail is a rule and refusal is an exception as held by the Superior Court. No legal ground has been pointed out by complainant and learned APG for refusal of bail to applicant/accused.

7- In view of above the applicant/accused makes out a case for grant of bail, I, accordingly confirm the interim pre-arrest bail already granted in favour of applicant/accused with direction to him to appear before the trial court. Since this crime pertains to the year 2016, therefore, learned trial court is directed to expeditiously proceed the matter, decide the same within a period of four months after receipt of this order. No un-necessary adjournment shall be granted to either side. Compliance report be submitted through Additional Registrar of this court.

JUDGE