

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.176 of 2019

Date	Order with signature of Judge
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For hearing of bail application.

19.02.2019

Mr. Waqar Alam Abbasi, Advocate for the applicant.
Ms. Amna Ansari, D.P.G.

NAZAR AKBAR, J. The applicant/accused is facing trial in Crime No.134/2018 under Section 489-F/420/34 PPC registered at P.S. Sir Syed, Karachi. The applicant after failing to obtain bail from the Court of II-Additional Sessions Judge, Central Karachi has preferred this bail application.

2. To be very precise, the facts of the case as spelt out from the FIR are that complaint Muhammad Nouman had paid his whole money of Rs.60,00,000/- for investment in cosmetics and trade business to his friend Muhammad Haris (the present applicant) and his brothers namely Amjad, Javed and Khalil. After some days complainant felt their dishonesty so he demanded to return his whole amount. The applicant given him a cheque bearing No.10094724 dated 30.01.2017 amounting to Rs.60,00,000/= of Bank Al-Habib in respect of return of his amount. the complainant submitted the said cheque in Bank Al-Habib, Disco Mor Branch, Karachi for the encashment on 07.02.2017 which was dishonoured for which he informed the applicant/accused but he requested for some time to pay his invested amount but the applicant failed to give the said amount to the complainant, therefore, the complainant lodged FIR against the accused persons.

3. Learned counsel for the applicant contended that the applicant has been falsely implicated in the alleged offence. He further contended that the complainant and applicant were very well known to each other and one day complainant's other friend namely Jawad, who is also friend of the applicant, stolen cheques of the applicant and later on said false cheque was presented in the bank. He argued that neither the said cheque was given by the applicant nor it was signed by the applicant. He lastly prayed for grant of bail to the applicant.

4. Learned DPG has opposed the grant of bail to the applicant / accused.

5. On perusal of available record and consideration of arguments advanced by the parties, I have noted that:-

- i. The FIR is silent about transaction of a huge amount of Rs.60,00,000/- given by the complainant to the applicant nor it is mentioned that through what mode and what way the alleged amount has been given by the complainant which creates doubt in the prosecution case;
- ii. Record shows that no acknowledgement receipt of receiving such a huge amount by the applicant is placed on record by the complainant;
- iii. In the FIR no specific name is mentioned that to whom such a huge amount has been given by the complainant;
- iv. The alleged cheque was dated **30.01.2017** and it was dishonoured on **07.02.2017** but the FIR was lodged on **20.04.2018** with delay of about one year and no plausible explanation has been given by the complainant in the FIR;
- v. The offence under Section 489-F is punishable only by three years and does not fall within the prohibitory clause of Section 497 Cr.P.C.
- vi. The applicant is behind the bars since last more than 10 months.

In the case of Khalil Ahmed Soomro and others vs. The State reported in **PLD 2017 Supreme Court 730** Hon'ble Supreme Court in para-4 of the judgment has observed as under:-

4. *On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497, Cr.P.C and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police.*

6. In view of the above facts and circumstances, the case for bail is made out, consequently the instant bail application is allowed. Applicant Muhammad Haris son of Muhammad Rafiq is admitted to bail subject to furnishing solvent surety in the sum of **Rs.500,000/-** (Rupees Five Hundred Thousand) and P.R bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Ayaz Gul