

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

Cr. Bail Application No.S- 157 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

06.03.2019

Applicants are not absent.

Mr. Niaz Muhammad Ghanghro, Advocate for applicants.

Mr. Parkash Kumar, Advocate for complainant alongwith complainant.

Mr. Shahzado Saleem Nahiyoon, Deputy Prosecutor General.

=

Zulfiqar Ahmad Khan, J: Through instant Criminal Bail Application, applicants seek pre-arrest bail in Crime No.7 of 2019, registered at Police Station Hatri under Section 489-F, 420 PPC.

2. The prosecution case as disclosed in the FIR is that complainant sold out his agricultural land admeasuring 110 acres and 05 ghuntas situated in Deh Wasi Sajan Tapo Chanri Taluka Talhar District Badin and the present applicants being brothers issued a cross cheque bearing No.1628243549 dated 20.11.2018 for an amount of Rs.7400,000/- of Muslim Commercial Bank Tando Muhammad Khan Station Road Branch which was deposited by the complainant in his account of Soneri Bank Isra University Hyderabad and was returned on the same day i.e. 20.11.2018 with the reason that cheque was not cashed. The complainant informed both the applicants/accused about the dishonor of cheque but they kept him on false hopes and promises. Resultantly, complainant lodged the FIR.

3. Learned counsel for the applicant *inter alia* contends that the applicants are innocent and have falsely been implicated in this case due to enmity over sale transaction of the agricultural land; that there is

inordinate delay of about 02 months in lodging the F.I.R, which has not been explained satisfactorily; that the ingredients of section 489-F PPC do not attract in the circumstances of the instant case; that the case does not fall within the prohibitory clause of section 497 Cr.P.C; that no role has been assigned to the applicants/accused; that there was sale transaction between the complainant and applicant No.1 over some agricultural land sold out for a consideration of Rs.3,20,00,000/- out of which complainant received Rs.86,00,000/- but the land given to the applicants was without any demarcation and the land was less and in fact the complainant party have committed fraud with the applicants. He lastly prayed for grant of pre-arrest bail.

4. Learned counsel for the complainant as well as learned Deputy Prosecutor General while opposing the instant bail application contended that the applicants have been nominated in the F.I.R. with specific role; that huge amount is involved in the case; that no proof with regard to any enmity between the parties has been placed on record; that the delay in lodging the F.I.R. has been plausibly explained.

5. I have carefully considered the arguments of learned counsel for the parties and perused the material available on record.

6. It would be pertinent to mention here that on the last date of hearing, applicants took time to make the payment in question however, today, counsel for the applicants files a statement that applicant No.1 Abdul Jabbar is not feeling well and has gone to Karachi for further medical treatment alongwith the applicant No.2.

7. Apart from above, admittedly, the applicants/accused have admitted the sale transaction and issuance of cheque in favour of the complainant which was dishonoured by the concerned Bank on its

presentation due to “sufficient funds” and have caused huge monetary loss to the complainant. They have also admitted that they got stopped the payment on the ground that complainant had given the possession of the land less than the area shown in the agreement and in this regard they have also filed F.C. Suit No.160 of 2018 but there is no denial of execution of sale agreement and issuance of cheque by the applicants/accused.

8. No doubt, section 489-F PPC does not fall within prohibitory clause, however, if reasonable grounds as well as circumstances are considered, bail can be declined even in respect of such cases which do not fall under prohibitory clause of section 497 Cr.P.C. Appraisal of the record reflects that applicant / accused are directly involved in the present case. As far as the delay in lodging of F.I.R is concerned, the same has been plausibly explained by the complainant that he was kept on false hopes by the applicants/accused; thus such delay in view of the above circumstances cannot be considered as fatal to prosecution case.

9. The essential requirements of Section 489-F PPC are:-

- i. a cheque issued dishonestly;
- ii. towards repayment of a loan of fulfillment of an obligation.
- iii. which is dishonoured on presentation.

10. It is observed that in criminal cases, after registration of an F.I.R, while investigating with such offence, physical custody of the accused person may be required by the investigating agency for ascertaining and verifying the circumstances being alleged by the complainant party and even for confirmation of the circumstances of the case put-forth and advanced by the accused person in his defence. It cannot, therefore, be said with any generalization that investigation into a criminal offence is meant only for effecting a recovery from the accused person and in a

case where no recovery needs to be effected such accused person cannot be arrested or cannot be refused bail. Mere assertion that alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. applicants cannot claim bail as of right in the case at hand. In this view of the matter the contention of the learned counsel that applicants are not required for any investigation purpose is not sustainable. Apart from above, the applicants have also failed to show any malafide on the part of the complainant or police, which is one of the pre-requisites for pre-arrest bail in a case involving a non-bailable offence.

11. The contention of the counsel that the offence with which the applicants are charged does not attract the prohibitory limb of section 497, Cr.P.C. does not *per se* make them entitled to the concession of bail. Grant of bail in such like cases is not a rule of universal application as each case has to be decided on its own merits. Such unscrupulous individuals cannot be given a ticket to freely roam in the public, despite having clearly cheated other individual through a bogus cheque. Such acts distort sanctity of sober elements of a society creating unease and disrespect of laws by promoting dishones practices.

12. Accordingly, *prima facie* and at this preliminary stage of bail, it appears that the ingredients of Section 489-F PPC are being satisfied. It would only after trial and once evidence is led in the trial, the trial Court will be able to conclude whether the cheque was issued in fulfillment of an obligation or otherwise.

13. While making tentative assessment, *prima facie* there appear reasonable grounds to believe that applicants / accused are connected with the offence with which they are charged hence he in my humble view, are not entitled for concession of pre-arrest bail.

14. For what has been discussed above, I am of the view that the applicants have failed to make out their case for grant of extra ordinary relief of pre-arrest bail, therefore, the interim bail granted to the applicants vide order dated 12.02.2011, is hereby recalled and the instant bail application is dismissed.

15. Needles to mention here that observations made hereinabove are tentative in nature and thus will not prejudice the case of either party in trial.

JUDGE

Tufail/PA