

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No. S-251 of 2019

Date	Order with signature of Judge
------	-------------------------------

Applicants: Yar Muhammad Mangnejo
Through Mr. Qurban Ali Malano
Advocate

Complainant: Ashiq Ali
Through Mr. Muhammad Ali Napar,
Advocate.

The state: Through Mr. Abdul Rehman Kolachi
DPG.

Date of hearing: 24th June, 2019.

ORDER

Adnan-ul-Karim Memon, J- Applicant Yar Muhammad Mangnejo is seeking Pre-arrest Bail in Crime No.59/2019, registered at Police Station, Kandiaro, for offences punishable under section 489-F PPC.

2. Prosecution has put the case against the applicant on the plea that both the parties entered into a verbal contract, consequently, the applicant succeeded in obtaining an amount of Rs.95,00,000/- from the complainant with the assurance that he will re-pay the said loan amount to him. On 21.11.2017, the applicant issued two cheques, one cheque bearing No.17846709 of Rs.5, 00,000/- and another cheque bearing No.7846708 of Rs.90, 00,000/- dated 27.8.2018 of Sindh Bank Khairpur, out of which one cheque of Rs.5, 00,000/- was honored on 12.1.2018, while another cheque of Rs.90, 00,000/- was not encashed

upon its presentation with the concerned Bank by the complainant such memo of endorsement was obtained from the concerned Bank on 1.10.2018. Complainant approached the applicant regarding dishonoring of the aforesaid cheque, who kept him on false hopes on the premise that his due amount will be paid and cleared in due course of time. The complainant being aggrieved by the aforesaid act of the applicant, filed application under section 22-A & 22-B Cr.PC before the learned Justice of Peace Naushahro Feroze, for registration of an F.I.R, finally his F.I.R was lodged as discussed supra. The Applicant moved pre-arrest Bail Application No.100 of 2019, before the learned Trial Court, which was dismissed vide Order dated 27.4.2019. The Applicant being aggrieved by and dissatisfied with the rejection of his pre-arrest Bail Application, approached this Court on 02.5.2019, and ad-interim Bail was granted to him vide order dated 02.5.2019 and since then he is on interim Bail.

3. Mr. Qurban Ali Malano, learned counsel for the applicant has contended that applicant is innocent and has been falsely implicated in the present case by complainant with ulterior motives; that there is unexplained delay of 13 days in lodging of the FIR; that complainant with malafide intention has fabricated a story to attract Section 489-F of P.P.C; that the aforesaid section is not attracted in the present case. He has submitted that, neither a loan was given to the applicant towards the re-payment whereof such could be issued nor the cheque has been issued in fulfillment of the applicant's financial obligation thus it is a case where the pre-arrest bail ought to have been allowed; that the alleged offence under Section 489-F does not fall within the prohibition contained in Section 497(1) Cr.P.C, therefore, case against the Applicant requires further inquiry; that the entire case of the prosecution depends upon the documentary evidence which is available with the prosecution

therefore, there is no question of tampering with the same; that the basic ingredients of Section 489-F are missing therefore, Applicant cannot be saddled with criminal liability of dishonoring of the aforesaid cheque by the concerned Bank; that the matter between the parties is under adjudication before the competent court of law on the issuance of the aforesaid cheque, therefore, Applicant cannot be saddled with criminal liability; that the matter between the parties is of Civil nature but, Complainant has converted it into a criminal case which requires further inquiry. The learned counsel for the applicant contended that there is no prohibition for grant of bail in respect of offences mentioned above, but with malafide intention offence under section 489-F P.P.C has been added by the complainant in order to bring the applicant's case within the ambit of fulfillment of his purported financial obligation or loan. The case entirely depends upon documentary evidence which is in possession of the prosecution; that initially case against the applicant was disposed of by police under Cancelled Class and such summary Report under Section 173 Cr.P.C was submitted before the learned trial Court; that the learned trial court has taken the cognizance and registered the case; that this a case of two version, one put forwarded by the complainant and second by the police, in such circumstances, malafide of the complainant cannot be ruled out. He lastly prays for confirmation of pre-arrest bail to the Applicant.

4. Learned DPG for the State assisted by the learned Counsel for the complainant flatly opposed for grant of bail to the present applicant on the ground that he not only committed fraud with the complainant and deprived him of the heavy amount so also issued a check knowingly that the same would not be honored by the Bank. Per learned counsel for the complainant in the facts and circumstances of the case the applicant is

not entitled for grant of pre-arrest bail merely for the reason that the offence does not fall under the prohibitory clause under section 497 Cr. P.C. Mr. Muhammad Ali Napar, learned counsel for complainant has pointed out that the pleas taken by the applicant for grant of pre-arrest bail are not made out, however the issuance of cheques by the applicant in favour of the complainant has not been denied, thus, the commission of offence under Section 489-F, P.P.C stands established from the data available on record, therefore the applicant is not entitled for extraordinary relief under Section 498-A, Cr.P.C. In support of his contention, learned counsel has relied upon the statement dated 24.6.2019 along with certain documents and argued that the aforesaid documents support the version of the prosecution, as such the applicant cannot be set free from the charges leveled against him at this stage.

5. During the course of arguments I queried from the learned counsel, whether summary suit filed by the complainant is still pending before the competent court of law, he replied in positive. I posted another question to him, whether the Crime No.59/2019 was disposed of under “cancelled Class” or otherwise, he replied that the learned Magistrate did not agree with the police report filed under Section 173 Cr.P.C and he took cognizance of the matter vide order dated 06.5.2019. However, he admitted that the summary order passed by the learned Magistrate is under challenge before this Court in Criminal Miscellaneous Application No.343/2019. Be that as it may, I am only concerned with the grounds of pre-arrest bail whether the same are made out in the present case or not, as I intend to decide the present matter on merits.

6. I have heard the learned Counsel for the Applicant, learned D.P.G for state as well as learned Counsel representing the Complainant and perused the material available on record and case law cited at the Bar.

7. Before deciding the pre-arrest bail on merit, which is basically based on documentary evidence. However, I am cognizant of the fact that, while deciding a Bail Application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C. nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant law have to be considered. I am also well aware of the fact that the grant of pre-arrest Bail is an extraordinary relief which is extended in exceptional circumstances when glaring malafide is shown on the part of prosecution to cause unjustified harassment and humiliation of person in case of his arrest.

8. A perusal of section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution: ---

(i) issuance of the cheque;

(ii) such issuance was with dishonest intention;

(iii) the purpose of issuance of cheque should be:-

(a) to repay a loan; or

(b) to fulfill an obligation (which in wide inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).

(iv) on presentation, the cheques dishonored. However, a valid defence can be taken by the accused, if he proves that:-

(i) he had made arrangements with his bank to ensure that the cheque would be honored; and

(ii) that the bank was at fault in dishonoring the cheque.

9. The law on the aforesaid proposition is very clear that if the applicant establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then prima facie he would be absolved from the punishment.

10. I am conscious of the fact that while deciding a bail application this Court has to make tentative assessment of the record which in this case is reflecting; that the applicant is an accused of a criminal case registered under section 489-F, P.P.C. The allegation leveled against the applicant is, that he issued a cheque amounting to Rs.90, 00,000/= in favour of the complainant, which was dishonored by the bank when presented before it for encashment. The applicant applied for his pre-arrest bail, which has been declined by the learned trial Court vide impugned order dated 5, 00,000/- in his favour on its presentation the same was encashed, by the concerned Bank. Contractual liability is available on record. Civil litigation in shape of summary suit is pending between the parties. Initially aforesaid criminal case was disposed of under C-Class, but the learned Magistrate did not agree with police report. Entire case depends upon documentary evidence.

11. Issuance of cheque amount of Rs. 90, 00,000/- (Rupees Ninety Lacs) by the applicant/accused to the complainant and its dishonored by the Bank is an admitted fact on account of insufficient funds. Memorandum of return of the cheque issued by the Bank reveals that the cheque was dishonored by the Bank with the objection "funds insufficient and exceeds amount". The objection of the Bank prima facie established that the applicant/accused has deliberately issued the aforesaid cheque to the complainant. However, the reasoning of the applicant prima-facie show the aforesaid factual position of the case, therefore the learned trial Court has yet to determine whether on account

of some business transaction between the parties the alleged cheque was issued in favour of the complainant or otherwise and on presentation, the same was returned on aforesaid endorsement, which requires detail deliberation on the issue, that is not permissible under the law.

12. I have noted that Applicant is charged with offence punishable under section 489-F P.P.C. maximum sentence for which is three years imprisonment thus, the same does not fall within prohibitory clause of section 497 Cr.P.C. Complainant has not given description of alleged business or friendly loan to the applicant, as to how, when and by what process, he delivered the huge amount to the applicant in cash, these factual aspects of the matter will be determined by the learned trial Court at the time of recording of evidence. The case against Applicant is based on documentary evidence which is yet to be determined by Trial Court. On the aforesaid proposition of law, I am fortified by the decision rendered by the Honorable Supreme Court in the case of Muhammad Sarfraz vs. The State (2014 SCMR 1032) wherein bail was granted for the offence under section 489-F P.P.C and in the case of Saeed Ahmed vs. the State (1995 SCMR 170) wherein concession of bail was extended to accused on the basis of documentary evidence.

13. In view of tentative assessment of the record as discussed supra, besides malafide or ulterior motive on the part of complainant has been alleged by the applicant on the aforesaid premises, therefore the case of Applicant requires further inquiry as provided under section 497(2) Cr.P.C, however, looking to the whole episode as narrated in the FIR, the applicability of the aforesaid section of PPC also needs complete determination by the learned trial Court. Even otherwise, it appears from the record that issuance of cheque and loss caused to the complainant

on account of bouncing of the aforesaid instrument requires thoroughly scrutiny during trial, till then, the case of the applicant required further probe. Prosecution states that in this matter investigation has been completed and the learned Magistrate has taken cognizance against applicant and the applicant is no more required for further investigation. No exceptional circumstance appears in this case to withhold bail of the applicant at this stage. I am of the view that to curtail the liberty of a person is a serious step in law, therefore, the learned presiding officers of the subordinate courts shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not be carried out in vacuum or in a flimsy and causal manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground. Therefore, extraordinary care and caution shall be exercised by the learned Judges of the subordinate courts in the course of granting or refusing to grant bail to an accused person, charged for offence(s), punishable with certain terms of punishment as provided under P.P.C. The learned presiding officers are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.

14. On the aforesaid factual assertion of the matter, the Applicant has made out a case of confirmation of pre-arrest bail at this stage. In these

facts and circumstances of the case, I am of the tentative opinion that Applicant/Accused has made out a case for grant of Pre-arrest Bail.

15. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the witnesses within a period of three months and conclude the trial after completing all codal formalities, in accordance with law and in the meanwhile, if the Applicant fails to appear before the learned trial Court, his Bail may be cancelled by the learned trial Court without obtaining any order from this court. It is expected from the learned trial Court that the direction of this Court, particularly in the Bail matters shall be adhered to and valid reasons are to be assigned, if the trial is not concluded within the stipulated time.

16. These are the reasons of a short order dated 24.6.2019, whereby, this bail application was allowed and interim pre-arrest bail granted to the applicant in the aforesaid crime vide order dated 02.05.2019, was confirmed on the same terms and condition.

JUDGE