

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1259 of 2016

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 13.02.2018
Decided on : 09.03.2018
For Applicant : Mr. Deen Dar Ali, Advocate.
For State : Ms. Rubina Qadir, APG

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 93 of 2016, by the trial Court, vide order dated 25.03.2016, the applicant Shaikh Noor Muhammad has approached this Court, by filing instant bail application under Section 498 Cr.P.C, for interim pre-arrest bail in case FIR No. 14 of 2016, under Section 420, 489-F PPC, registered at P.S. Gulbahar, Karachi.

2. Succinct prosecution story as narrated in the FIR is that on 26.01.2016 at 0030 hours complainant Syed Danish Hussain lodged the FIR at Police Station Gulbahar, stating therein that he is residing at the given address and working in Merchant Navy. He and his brothers, namely, Syed Hamad Hussain and Syed Jawad Hussain on different dates paid Rs. 45,00,000/- to Shaikh Noor Muhammad i.e. applicant/accused in the year 2011 in connection with business and employment and on account of that two employment letters of Civil Aviation Authority were delivered, but both letters were found to be forged and fabricated and as such, they demanded from applicant/accused, the amount of Rs. 45,00,000/- and the applicant/accused with great difficulty paid them Cheque No. 6695429 of Rs. 45,00,000/- which was dishonoured thrice on presentation i.e. 21.12.2015, 28.12.2015 and 31.12.2015. He made such complaint to the SHO of PS Gulbahar on 31.01.2016 against the applicant/accused and on failure to get FIR registered by the police concerned, then he made an application under Section 22-A, Cr.PC in the Court of District & Sessions Judge Central, Karachi, and on the directions of the concerned Court, he lodged the instant FIR against the applicant/accused.

3. Learned counsel for the applicant/accused has argued that applicant/accused is innocent and has falsely been implicated in this case by the complainant with malafide intention; that complainant lodged the FIR after delay of about 5 years and the complainant is still a student of Merchant Navy, whereas, no elder brother of the complainant has appeared as prosecution witness in this case inspite of the facts that amount was paid by the complainant and his two brother at different dates in 2011; that the applicant/accused is working in Sindh Welfare Workers Board since 2007, at a salary of Rs. 19,800/- and cannot imagine to deceive a person of such a huge amount of Rs. 45,00,000/-; that inspite of the fact that cheque in question has been filled in three handwritings, firstly the name of the complainant with different writing, secondly the amount of words of Rs. 45,00,000/- with different ink and writing and thirdly, the signature of the applicant/accused has been fabricated with malafide intention, as well as with ulterior motives to harass and humiliate the applicant/accused; that story advanced by the prosecution is belied by the statement of PWs, namely, Muhammad Haris and Muhammad Zeeshan, as according to their statement under Section 161 Cr.P.C. an amount of Rs. 4,25,000/- alongwith passport of Muhammad Haris and Rs. 3,90,000/- of Muhammad Zeeshan was handed over to Syed Danish Hussain for sending them abroad, and the rest of the story of the prosecution has been fabricated by the complainant after stealing cheque book from the house of the complainant; that complainant has mentioned in the FIR that he is serving in Merchant Navy, whereas in Final Charge Sheet and other documents, it has been written that the complainant is getting education in Merchant Navy and it has been further pointed out in the Final Charge Sheet that complainant has no evidence/proof about appointment letters, neither any witness about the confirmation of his story, but Gulbahar police with the collusion of complainant registered this false case inspite of fact that names of two persons were not having joint account with the bank, hence cheque in question was not to be processed as two persons cannot be mentioned in a single cheque and after registration of this false case, Gulbahar police with the collusion of the complainant raiding the house of the applicant/accused as well as

the houses of the relatives of the applicant/accused; that the alleged offence is not covered within the exceptional clause of Section 497 Cr.PC and is punishable for three years only and the case of the applicant/accused is covered under Sub-Clause 2 of Section 497 Cr.PC and it is a fit case for grant of confirmation of pre-arrest bail, as investigation by the police in a case of Passport is without jurisdiction and nullity in the eyes of law. The learned counsel for the applicant/accused has relied upon the following case laws in support of his contention.

- i. 2013 SCMR 51.
- ii. PLD 2016 S.C 171.
- iii. 2017 YLR note 72 Sindh
- iv. 2017 MLD 100, Sindh.
- v. PLD 2005 Lahore 607.

The learned counsel has also provided certified copies of charge sheet of present crime and depositions of the complainant recorded in present crime by the trial Court. Learned counsel for the applicant/accused in support of his version has relied upon 2013 SCMR 51 (relevant observations at page 53), it was held by the Hon'ble Supreme Court in the said case, which is reproduced as under:-

“Every transaction where a cheque is dishonored may not constitute an offence. The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation and lastly that the cheque in question is dishonoured.”

4. Learned A.P.G has strongly opposed for the confirmation of interim pre-arrest bail granted earlier to the applicant/accused, on the ground that the cheque in question was bounced on presentation before the Bank repeatedly by the complainant due to insufficient funds.

5. Having heard arguments of the learned counsel for the applicant/accused and learned A.P.G. at length, I have come to the conclusion that section 489-F PPC has been promulgated for those persons, who dishonestly issues cheques towards repayment of a loan or fulfilment of an obligation, which is dishonoured on presentation. As such without any doubt, it can be said that the basic ingredient of section 489-F PPC is the cheque in question must have been issued with dishonest intention

by the accused knowingly that payment of the cheque would not be available on presentation. In the instant case the complainant stated in FIR that the applicant/accused has committed forgery and fraud with the complainant intentionally and deliberately after preparing fake appointment letters in the name of the brothers of complainant and delivered the said letters to the complainant. It has also come on record that in result of reinvestigation on submission of challan before the Magistrate concerned, Section 468 and 471 of PPC were also added owing to the reasons that the said Magistrate found the applicant/accused as involved in the case of forgery for the purpose of cheating under Section 468 PPC and using their fake and forged documents as genuine punishable under Section 471 PPC and he has taken cognizance against the applicant/accused under these sections. The applicant/accused has not challenged the order of Magistrate. However, the case of the applicant/accused does not fall within the prohibitory clause of Section 497(1) Cr.PC as offences under Sections 468, 420 and 471 PPC are bailable and offence under Section 489-F PPC requires evidence to prove basic ingredient of the section i.e. issuance of cheque with dishonestly and intentionally, offence under Section 489-F PPC entails punishment for three years, hence not bailable, however, this offence does not fall within the prohibitory clause of Section 497(1) Cr.PC. Record shows that the statement of the complainant has already been recorded by the trial Court and it is to be proved at trial, whether cheque was issued with dishonest intention. Therefore, the matter requires further inquiry. As such case for grant of interim pre-arrest bail already granted to the applicant/accused is confirmed on the same terms and conditions.

It needs not to iterate that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

J U D G E