

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No. 434 of 2020

Applicant : Zohaib Ahmed S/o Siraj-ul-Haq,
Through M/s. Nisar Ahmed Narejo and Muhammad
Ramzan, Advocates.

Respondent : The State, through Mr. Siraj Ali Khan Chandio,
Additional P.G, Sindh.

Date of hearing: 10.04.2020
Date of order: 10.04.2020

ORDER

ABDUL MOBEEN LAKHO J:- Through instant criminal bail application applicant/accused Zohaib Ahmed S/o Siraj-ul-Haq seeks post-arrest bail in Crime No. 11 of 2020, registered at P.S Dhabiji, Karachi under Section 489-F/420/506 PPC vide order dated 10.03.2020 passed by the learned Sessions Judge, Thatta.

2. Briefly stated, the facts of the case are that this post arrest bail application under Section 497/498 Cr.P.C. was filed by the accused namely Zohaib Ahmed S/o Siraj-ul-Haq through his advocate for his release on bail in the captioned case before the Sessions Judge, Thatta. Earlier he applied for grant of bail under Section 497 Cr. P.C in the Court of learned Judicial Magistrate, Mirpur Sakro at Gharo but his bail plea was declined vide order dated 03.03.2020. He was then approached in the Court of learned Sessions Judge, Thatta for grant of bail by assailing the said order passed by trial Court. The notice of this bail application were given to the learned DDPP for the State as well as Complainant. The Complainant also appeared and contested that bail application through his advocate; that the prosecution case is that complainant Abdul Qayoom Sarki has own business of animal feed. One Zohaib Ahmed Lodhi (the present accused) also used to purchase such feed from complainant and used to make payment after sometime. During this transaction an amount Rs.8,60,500/- became outstanding towards accused Zohaib Ahmed. On 07.08.2019 complainant alongwith his friend PWs Rab Nawaz and Maqsood Ali went at store/shop of accused for such amount. The accused issued postdated cheque No.10471678 dated 09.12.2019 of Bank Al-Habib Gharo Branch for amount Rs.8,60,500/- in favour of complainant. When complainant presented such cheque with consent Bank on the due date he was informed that there was no such amount in account of the accused and it was bogus cheque. The complainant obtained such report

from the Bank and as soon came out he received call from mobile No.0321-2253780 of Mir Muhammad Chandio who issued threats to him in case he take any legal action over the dishonour of cheque. The complainant approached the accused Zohaib who kept him on false hopes for return of the amount. On 25.02.2020 at 2330 hours, complainant appeared at P.S. Dhabeji and lodged FIR of the incident. Hence that bail application was filed.

3. Learned counsel for the applicant/accused contends that the accused is absolutely innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives; that the co-accused namely Mir Muhammad S/o Noor Muhammad has already been granted Pre-Arrest Bail by the Hon'ble Court of District & Sessions Judge, Thatta on 27.02.2020 sum of Rs.20,000/- vide B.B.A No.287/2020, hence the present applicant/accused is also entitled for grant of Bail as per rule of consistency; it is pointed out by him that the alleged incident has taken place on 07.08.2019 whereas the FIR has been registered on 25.02.2020, after unexplained delay of about 06 months, which makes the prosecution story highly doubtful and the benefit of doubt always goes in favour of the accused at any stage of the case even at Bail stage, thus the applicant/accused is entitled for grace of Bail; that the actual facts are that the applicant/accused was purchasing the Feed from the complainant, but he was clearing the "outstanding amount" at the time of purchasing the same, there was outstanding amount of the complainant towards the applicant for which the applicant issued One Cheque to the complainant as a Surety/Guarantee not for encashment of the same, as it was settled that the applicant/accused will clear outstanding amount then the complainant will return back the Security/Guarantee Cheque to him, when the applicant paid the outstanding amount to the complainant, then the complainant did not return the Cheque the applicant and later-on misused and registered the instant false FIR against the applicant/accused, hence false implication cannot be ruled out and the applicant/accused is entitled for grant of bail. The case requires further inquiry; that the alleged offence does not fall within the ambits of Section 497 Cr.P.C.; that the applicant/accused is neither hardened criminal nor has previous criminal record (as per instructions), therefore, he is entitled for grant of bail and he will not misuse the concession of bail if he is enlarged on bail, as stated by the learned counsel; that the applicant/accused is permanent resident of Thatta and there is no chance of his absconding from the prosecution evidence as well as applicant/accused is ready to furnish solvent surety for the entire satisfaction of this Hon'ble Court.

4. Learned A.P.G, representing the State recorded his no objection for grant of bail to the applicant/accused, if applicant is ready to deposit the additionally liability amount i.e. Rs.4,00,000/- (Rupees Four Lacs Only) with the Nazir of this Court.

5. I have heard the learned counsel for the applicant/accused and Learned A.P.G and perused the material available on record.

6. Though allegedly applicant/accused used to purchase feed from the complainant's shop and used to make payment after sometime and during course of that transaction allegedly an amount of Rs.8,60,500/- became outstanding against the applicant/accused and in lieu thereof allegedly he had issued a Cheque bearing No.10471678 dated 09.12.2019 drawn on Bank Al-Habib Gharo Branch, which on presentation bounced, but no detail of such business transaction has been furnished by the complainant. It is yet to be determined by the trial Court that the cheque if any was issued to the complainant in some kind of obligations and/or with the intention to cheat and defraud him of his legitimate payment which can only be done after recording of evidence. The maximum sentence under section 489-F PPC is three years. The case does not fall within the prohibitory clause. The petitioner is behind the bar and not required by the police for the purpose of investigation at this stage. The accused during the arguments submitted that he is ready to deposit the amount of additional liability with the Nazir of this Court. Thus keeping in mind the dictum laid down in the case of (Zafar Iqbal .. VS .. Mohammad Anwar and others (2009 SCMR 1488) wherein it was held that:

...
"As far as section 489-F, P.P.C. is concerned it prescribes sentence of 3 years. The Courts, in such-like cases where offence falls within the non-prohibitory clause, consider favourably by granting bail as a rule but decline to do so in the exceptional cases. As far as exceptional circumstances are concerned those are to be taken into consideration depending upon each case".

...
The applicant / accused is enlarged on post arrest bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- and P.R Bond in the like amount to the satisfaction of Nazir of this Court as well as on deposit of additional liability amount of Rs.4,00,000/- with the Nazir of this Court.

7. The criminal bail application is disposed of. These are the reasons of short order dated 10-04-2020.

JUDGE

Jamil Ahmed / P.A