

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

Cr.Bail.Appl.No.S- 1427 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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13.01.2020.

Mr. Shahnawaz Brohi, Advocate for applicant alongwith applicant.  
Ms. Rameshan Oad, A.P.G. for the State.  
Complainant present in person.

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Mr. Umair Aman, Advocate files Vakalatnama on behalf of complainant, taken on record.

2. Applicant is present on interim pre-arrest bail granted to him by this court on 20.12.2019. Today this bail application is fixed for confirmation or otherwise.

3. Facts of the prosecution case as per FIR lodged by complainant Rizwan Sarwar on 30-11-2019 at 1400 hours with Police Station Gharibabad are that on 09-05-2019 Vasdev s/o Molchand obtained loan of Rs.26,50,000/-, out of which he had paid Rs.850,000/- in cash, Rs.14,000,00/- through Cheque No. 10059672 dated 09-05-2019 of Bank Islami Mirpurkhas and Rs.400,000/- through Cheque no. 21911066 dated 21-05-2019 of Al-Barka Bank Mirpurkhas and for repayment of loan amount, Vasdev issued Cheque No. 2423155668 of Rs.16,50,000/- dated 30-10-2019 and Cheque No. 2423155685 of Rs.10,000,00/- dated 28-10-2019 of Allied Bank, General Bus Stand Branch, Mirpurkhas and such "Iqrarnama" was also executed in presence of PWs Ghulam Sarwar and Muhammad Ajmal. On the due dates, cheques were presented before the bank for encashment but the same were returned with memo dated 01-11-2019. He then approached Vasdev, informed him about dishonouring of Cheques and demanded his amount but the accused not only refused to pay his amount but threatened him for dire consequences, he then moved such application before the Court, obtained letter and then lodged such report.

4. Learned counsel for the applicant/accused has argued that FIR is delayed for about one month without any plausible explanation; that complainant received order from the Court on 26-11-2019 and after four days he lodged the FIR as against the applicant/accused which shows malafide on

part of complainant. It is further argued that according to application U/S 22- & B Cr.P.C the applicant/accused issued cheque with the name of Subhan Traders but this fact is not mentioned in the FIR. It is further argued that applicant/accused issued cheques to complainant as security for repayment of amount, the complainant misused the same only to get interest on the principal amount. It is further argued that case of the applicant/accused is one of further inquiry, the offence is not falling under the prohibitory clause, as such the applicant/accused is entitled for grant of bail. Lastly, he prayed for grant of bail.

5. Learned A.P.G. assisted by learned counsel for the complainant while arguing the bail application opposed the grant of bail and argued that applicant/accused admits the issuance of cheques which makes strong prima facie case against the applicant/accused and shows that the applicant/accused obtained loan amount from the complainant and for repayment of loan amount he had issued cheques and this fact is also mentioned by complainant in his application U/S 22-A-6 (iii) Cr.PC. It is further argued that the complainant has no other reasons to falsely involve the applicant/accused in this case. It is further argued that the case of the applicant/accused is not of further inquiry, sufficient material is available on record to connect the applicant/accused with the commission of the offence, as such; the bail application of the applicant/accused merits no consideration and is liable to be dismissed.

6. Arguments heard. Perused record.

7. It appears from the record that case has been challaned and present applicant / accused is no more required for investigation. It further appears from the record that alleged incident took place on 01.11.2019 whereas FIR was lodged on 30.11.2019 after the delay of about 29 days and the delay in FIR has not been plausibly explained. From the police papers it appears that parties have already dispute over some settlement of accounts. Nothing is on record that the applicant / accused is previous convict. It is noted that the present applicant / accused is involved in a case u/s 489-F, 420, 506(i) PPC. Sections 420 and 506(i) PPC are bailable whereas Sections 489-F though is not bailable but its` punishment does not fall within the prohibitory clause of Section 497 Cr.P.C. The Honourable Supreme Court in its various pronouncements have already held that in case the offence does not fall

within the prohibitory clause then the grant of bail to an accused is rule and its refusal is an exception. It further appears that there is no exceptional ground to withhold the concession of bail to the applicant / accused.

8. As observed above, case has already been challaned and under these circumstances, sending the applicant/accused behind the bar would not serve any purpose. Accordingly, instant bail application is hereby allowed and the interim pre-arrest bail already granted to applicant/accused on 20.12.2019 is hereby confirmed on same terms and conditions. However, in this connection trial court is directed to decide the trial as early as possible preferably within a period of two (2) months and no unnecessary adjournment would be granted to either side. Such compliance report shall be submitted to this court through Additional Registrar.

9. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial. It is made clear that in case if during trial, applicant / accused misuses the concession of bail, the trial court would be competent to take action against the applicant and his surety and cancel his bail without making any reference to this court.

JUDGE

Tufail/PA