

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1375 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

12.10.2021 :

Mr. Farooq Hayat, advocate for the applicant / accused.

Chaudhary Asif Ali, advocate for the complainant
a/w complainant Muhammad Suhail (CNIC No.42201-0870868-9).

Mr. Hussain Bakhsh Baloch, Addl. P.G.
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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in Crime No.17/2021 registered against him on 09.01.2021 at P.S. Gizri Karachi South under Sections 489-F PPC.

2. According to the subject FIR lodged by the complainant Muhammad Suhail, the applicant / accused handed over to him a cheque dated 21.02.2020 for Rs.2,250,000.00 towards the sale consideration of the cloth sold by him to the applicant, but the aforesaid cheque was dishonoured upon presentation for lack of funds. Upon registration of the subject FIR by the complainant, the applicant was arrested whereafter he filed post-arrest Bail Application No.Nil/2021 which was dismissed by the learned trial Court vide order dated 20.04.2021 ; and, the post-arrest Bail Application No.1660/2021 filed by him before the learned VIIIth Additional Sessions Judge Karachi South was also dismissed vide order dated 08.05.2021.

3. It is contended by learned counsel for the applicant that the subject cheque was handed over by the applicant to the complainant as per the usual market practice as security for the cloth purchased by him ; as per the mutual understanding, the complainant was required to inform the applicant before presenting the cheque ; despite this position, the cheque was presented by the complainant without informing the applicant which shows malafide on his part ; there was an unexplained delay of more than ten (10) months in lodging the FIR which fact alone is sufficient for the grant of bail ; the alleged claim of the complainant is fictitious and bogus as till date he has not initiated any recovery proceedings against the applicant for recovery of the amount of the subject cheque ; the matter requires further inquiry ; the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. ; the applicant is behind the

bars since last more than six (06) months and till date no witness has been produced or examined by the prosecution ; the applicant does not have any previous criminal record ; and, there is no possibility that the applicant will tamper with the evidence or influence the witnesses of the prosecution or abscond if he is enlarged on bail.

4. On the other hand, learned counsel for the complainant submits that the applicant has not denied his signature on the subject cheque nor has he disputed the fact that the subject cheque was issued by him in favour of the complainant ; the delay in lodging the FIR was because of the negotiations between the parties ; and, the applicant is not entitled to the concession of bail.

5. While adopting the above submissions made on behalf of the complainant, learned APG submits that the stance taken by the applicant that the cheque was handed over by him to the complainant as security is not believable, particularly in the facts and circumstances of this case.

6. I have heard learned counsel for the applicant and complainant and the learned APG and have also perused the material available on record. According to the FIR, the subject cheque dated 21.02.2020 allegedly handed over by the applicant to the complainant was presented by the complainant, but the same was dishonoured. Despite the above position, the FIR was lodged on 09.01.2021 i.e. after more than ten (10) months of the dishonouring of the cheque. Thus there is an admitted delay of more than ten (10) months in reporting the alleged crime against the applicant. The explanation for such unusual and long delay offered on behalf of the complainant does not appear to be satisfactory. Moreover, the date when the subject cheque was actually handed over to the complainant by the applicant, has not been disclosed in the FIR. The dispute alleged in the FIR appears to be that of a civil nature. In view of the above, this case requires further inquiry in my humble opinion.

7. Moreover, the material evidence relating to the subject cheque would be documentary which would either be with the complainant or with the banks of the complainant and applicant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. The offence alleged against the applicant does not fall within the prohibitory clause of Section 497 Cr.P.C. In view of the above, the principle that grant of bail in such an offence is a rule and refusal an exception, authoritatively and consistently enunciated by the Hon'ble Supreme Court, is attracted in the instant case. Thus, the applicant is entitled to the concession of bail.

8. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. In view of the above, the applicant / accused Muhammad Kashif son of Muhammad Rafiq is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

This bail application stands disposed of in the above terms.

J U D G E