

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 54 of 2021

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

15.10.2021 :

Syed Shahid Mushtaq, advocate for the applicant / accused
a/w the applicant / accused Muhammad Faiq.

Mr. Ayaz Ali, advocate for the complainant

Mr. Hussain Bakhsh Baloch, Addl. P.G. a/w ASI Habib-ur-Rehman of
P.S. Aziz Bhatti and ASI Muhammad Mushtaq of P.S. Bahadurabad.

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NADEEM AKHTAR, J. – Through this application under Section 498 Cr.P.C., the applicant / accused has prayed that he may be admitted to bail pending trial in Crime No.262/2020 registered against him on 23.09.2020 at P.S. Bahadurabad Karachi East under Sections 489-F PPC. Vide order dated 13.01.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.200,000.00 and a P.R. bond in the like amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Ghulam Hussain, he purchased a plot from the applicant / accused for a total sale consideration of Rs.9,000,000.00 out of which he paid an amount of Rs.3,000,000.00 to the applicant as part payment. Subsequently, it transpired that the said plot was not in the name of the applicant and the file thereof had been stolen. In the above background, the complainant demanded the return of the amount paid by him, and accordingly the applicant handed over a cheque for Rs.3,000,000.00 to him which was dishonoured upon presentation due to lack of funds. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant by the learned IInd Additional Sessions Judge Karachi East vide order dated 18.11.2020 passed in Pre-Arrest Bail Application No.4784/2020. However, vide order dated 10.12.2020 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge.

3. It is contended by learned counsel for the applicant that there was an unexplained delay of 43 days in lodging the FIR which fact alone is sufficient for the grant of bail ; the alleged claim of the complainant is fictitious, bogus and malafide 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 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 ; 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. Learned Addl. P.G. has adopted the submissions made on behalf of the complainant.

5. 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 date of incident was 12.08.2020 and the alleged crime was reported on 23.09.2020. Thus, there was an admitted delay of 43 days in lodging the FIR. The explanation for such unusual and long delay offered on behalf of the complainant does not appear to be satisfactory. The dispute alleged in the FIR appears to be that of a civil nature and the authenticity and/or genuineness of the cheque allegedly issued and handed over by the applicant is yet to be determined. In view of the above, this case requires further inquiry in my humble opinion. 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.

6. The applicant has alleged malafide on the part of the complainant. 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.

7. 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.

8. In view of the above, the interim bail granted to the applicant / accused Muhammad Faiq son of Muhammad Laiq Ali vide order dated 13.01.2021 is hereby confirmed on the same terms and conditions. This bail application stands disposed of in the above terms.

J U D G E