

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1357 of 2020

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

23.11.2021 :

Mr. Javaid Ahmed Chatari, advocate for the applicant / accused
a/w the applicant / accused Azeem Sadiq.

Ms. Lubna A. Abbasi, advocate for the complainant

Ms. Amna Ansari, Addl. P.G. Sindh.

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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.138/2019 registered against him on 28.01.2019 at P.S. Preedy Karachi, under Sections 420, 489-F and 34 PPC. Vide order dated 11.09.2020, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.100,000.00 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 Jamshed Qasim, he gave money to one Arif Memon (co-accused) as sale consideration for purchasing a land ; after about four to five years, he demanded refund of the said money along with profit thereon ; and, the co-accused handed over to him two cheques of Rs.1,000,000.00 each issued by the present applicant / accused, which were dishonoured upon presentation on 12.12.2018 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 South in Bail Before Arrest Application No.3262/2019. However, vide order dated 09.12.2019 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 the alleged claim of the complainant is fictitious, bogus and malafide ; the applicant and the co-accused were engaged in a business and the subject cheques were handed over by the applicant to the co-accused in relation to their own business which had no concern with the complainant ; the applicant was not aware that the said cheques will be misused by the co-accused or will be handed over by him to a third party ; till date the complainant has not initiated any recovery proceedings against the applicant for recovery of the amount of the subject cheques ; there was an unexplained delay of 47 days in lodging the FIR which fact alone is sufficient for the grant of bail ; 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 is not entitled to the concession of bail as he has not denied his signature on the subject cheques. It was not disputed by her that there was a business transaction between the complainant and the co-accused. No explanation was offered on behalf of the complainant regarding the delay in lodging the FIR. While adopting the submissions made on behalf of the complainant, learned Addl. P.G. submits that the charge-sheet has been submitted before the learned trial Court and now the case is at the stage of evidence.

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 the alleged incident was 12.12.2018 when the subject cheques were dishonoured, and the alleged crime was reported on 28.01.2019. Thus, there was an admitted delay of 47 days in lodging the FIR. As noted above, no explanation whatsoever has been offered by the complainant regarding the delay in lodging the FIR. The dispute alleged in the FIR between the complainant and the co-accused appears to be that of a civil nature and the authenticity and/or genuineness of the cheques handed over to the complainant in the circumstances alleged in the FIR is yet to be determined by the learned trial Court. The question whether the subject cheques could be handed over to the complainant by the co-accused without the knowledge and consent of the present applicant shall also have to be considered by the learned trial Court. In view of the above, this case requires further inquiry in my opinion. Moreover, the investigation in this case has been completed and now the case is at the stage of evidence. Therefore, the applicant will not be required for investigation nor is there any possibility that he may tamper with the evidence or influence the witnesses of the prosecution.

6. The applicant has alleged malafide on the part of the complainant. His guilt or innocence 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 the 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 Azeem Sadiq son of Muhammad Sadiq vide order dated 11.09.2020 is hereby confirmed on the same terms and conditions. If the concession of bail is misused by the applicant in any manner whatsoever, the learned trial Court will be at liberty to take appropriate action against him in accordance with law, including cancellation of bail.

This bail application stands disposed of in the above terms.

J U D G E