

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No. S- 890 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicant: Muhammad Ali Rajput
through Mr. Masood Rasool Babar, Advocate for
whom Mr. Sajjad Ahmed, Advocate is holding brief.

Complainant: Muhammad Muzaffar through Mr. Sajjad Ahmed
Soomro, Advocate

Mr. Nazar Muhammad Memon, Addl. P.G Sindh

Date of hearing & decision: 19.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J.- The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned 2nd Additional Sessions Judge, Hyderabad vide order dated 1.10.2021.

2. The allegation as per FIR against the applicant is that he obtained loan amounting to Rs.31, 05,500/- from the Complainant in presence of witnesses Muhammad Javed and Muhammad Ayoub and issued a cheque dated 2.2.2021. It is further alleged that on presentation of the cheque before the concerned bank, it was dishonored; hence the above FIR No. 35 of 2021 was registered at police station Phuleli under Section 489-F PPC.

3. Today when the matter was called, the applicant was called absent; however his counsel chosen to remain busy before another forum. Keeping in view the above position, I have heard learned APG on the subject issue and have also perused the material available on record.

4. The plea taken by the applicant / accused in the memo of bail application is that he has not committed the alleged offence charged with; he is innocent and has falsely been implicated by the police to

bow before the illegal wishes of the Complainant who have managed the cheques and subsequently produced before the concerned officer of the bank and got it dishonored with malafide intention and ulterior motives; that the background of present case is that the applicant was doing business-dealing with complainant, through cash; and, used to give him cheques as security for the aforesaid purpose; and sometimes complainant also used to give cheques to the applicant and in this way both were doing the business transaction in good faith; that at the time of windup of business, the applicant handed over all the cheques to complainant but the complainant malafidely did not return his cheques and assured him that his cheques will be delivered accordingly, thereafter the applicant repeatedly demanded the delivery of cheques, but nothing could be done. Finally quarrel took place between them and this triggered the cause to the complainant to settle his score with the applicant by presenting the cheques to concerned branch of bank and got dishonored the cheque from the bank and registered the instant case malafidely by managing the story as discussed supra.

5. Per applicant, the FIR has been registered after inordinate delay of 21 days without plausible explanation hence deliberation and consultation cannot be ruled out; that the story disclosed by the complainant in the application under Section 22-A & B Cr.P.C is different from the contends of FIR and the complainant has made dishonest improvements in the FIR; that no date of receiving of alleged cheque is mentioned in the FIR nor the complainant has disclosed that in whose presence the alleged cheque was issued; that the role assigned to the applicant is quite untrustworthy and shaky and requires detailed enquiry into the matter as such at this stage the applicant is entitled for concession of pre-arrest bail; that the offence does not fall within the ambit of prohibitory clause and that the bail cannot be withheld as punishment; that all the witnesses are interested and there is no likelihood of tempering with the prosecution evidence; that the applicant is neither desperate nor dangerous criminal and nor there is any hope of his absconding as such he is entitled for confirmation of his pre-arrest bail already granted by this court.

6. Learned Addl. P.G. duly assisted by Mr. Sajjad Ahmed Soomro learned counsel for the complainant has argued that the applicant in

his memo of bail application has admitted that he was dealing with the complainant in the business and that he issued the cheque to him; that the applicant in his application has not disclosed that in whose presence he returned the cheques to the complainant but complainant malafidely did not return the cheques to him; that it is an admitted position that applicant has issued the subject cheque to the complainant without arranging with the bank about the subject amount and dishonestly issued the cheque which later on was dishonored; therefore, the applicant is not entitled to the concession of pre-arrest bail as such his application for pre-arrest bail is liable to be dismissed and the interim pre-arrest bail granted to him may be recalled. In support of his contentions, he relied upon the case law reported as SBLR 2020 Sindh 106.

7. It is well settled that grant of pre-arrest bail is an extraordinary remedy in criminal jurisprudence; it is the diversion of usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law; therefore an accused seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill, the criminal case as it seriously hampers the course of investigation. Reliance is placed upon the cases reported as Rana Abdul Khaliq vs. The State (2019 SCMR 1129).

8. In the present case the essential requirement for grant of pre-arrest bail i.e. mala fide, ulterior motive, or abuse of process of law, situations wherein the Court must not hesitate to rescue innocent citizens are conspicuously missing. Grant of bail to accused before his arrest to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of the law for ulterior motives and it cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of Section 497 Cr. P.C i.e. unless he establishes the existence of reasonable grounds leading to belief that he was not guilty of the offense alleged against him and that accused has to show malafides on the part of Complainant / prosecution. But, in this case, none of the above conditions appears to be satisfied. Reliance in this regard may be placed upon the case of *Mukhtiar Ahmed v. The State and*

others (2016 SCMR 2064) and Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427).

9. Since, the applicant-accused has failed to show a single malafide on the part of complainant/ prosecution to falsely implicate him in the case and there appears no reasonable ground to believe that he was not guilty of the offense alleged against him, therefore, extraordinary relief of concession of bail cannot be granted to him. In addition to the above, his absence for today also disentitles him for grant of extraordinary concession of pre-arrest bail. Accordingly, the instant bail application stands dismissed. Consequently, interim pre-arrest bail already granted to applicant vide Order dated 7.10.2021 is hereby recalled.

10. The observations recorded hereinabove are tentative, shall not prejudice at trial Court.

JUDGE

Karar Hussain/PS*