

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Bail Application No. 2105 of 2021**

Date	Order with signature of Judge
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For order on office objection :  
For hearing of bail application :

**11.01.2022 :**

Mr. Iftikhar A. Gohar, advocate for the applicant / accused.

Mr. Zafar Ahmed Khan, Addl. P.G.

Complainant called absent.

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**NADEEM AKHTAR, J.** – Through this bail application under Section 497 Cr.P.C., the applicant / accused Muhammad Ikram seeks admission to post-arrest bail in Crime No.223/2021 registered against him on 04.06.2021 at P.S. Sukhan, Malir Karachi, under Section 489-F P.P.C.

2. According to the subject FIR lodged by the complainant Yasir Khan, an amount of Rs.1,000,000.00 was given by him to the applicant as an investment for business purpose ; and, the applicant handed over to him a cheque which was dishonoured twice 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 on 15.06.2021 by the learned V<sup>th</sup> Additional Sessions Judge Malir Karachi in Bail Before Arrest Application No.2463/2021. However, vide order dated 03.08.2021 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge. Thereafter, the present applicant / accused was arrested and remanded to jail by the learned trial Court. He then filed post-arrest Bail Application No.4263/2021 which was dismissed by the learned V<sup>th</sup> Additional Sessions Judge Malir Karachi vide order dated 14.10.2021.

3. It is contended by learned counsel for the applicant that the alleged claim of the complainant is fictitious, bogus and malafide ; out of the amount of Rs.1,000,000.00 invested by the complainant, the applicant has already returned an amount of Rs.900,000.00 to him which amount was deposited in his bank account ; this fact has been concealed by the complainant in the FIR ; till date the complainant has not initiated any recovery proceedings against the applicant for recovery of the amount of the subject cheque ; the subject cheque was not dishonoured for lack of funds as alleged by the complainant, but was returned as the bank account of the applicant was lying blocked ; 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 25.11.2021, the complainant made a statement before this Court that he was not in a position to engage a counsel and he would be relying on the submissions made by the learned Addl. P.G. The learned Addl. P.G. submits that the applicant is not entitled to the concession of bail as he deliberately issued a cheque in respect of a bank account which was lying blocked. He further submits that this fact alone is sufficient to show the dishonesty on his part.

5. I have heard learned counsel for the applicant and the learned APG and have also perused the material available on record. The applicant has alleged malafide on the part of the complainant. He has also claimed that he has already returned an amount of Rs.900,000.00, being 90% of the amount of the subject cheque, to the complainant, and a copy of the deposit slip issued by the bank has been filed by him. The dispute alleged in the FIR appears to be that of a civil nature and the offence alleged in the FIR is yet to be determined by the learned trial Court. Therefore, this case requires further inquiry in my opinion. 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. 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 record shows that the applicant is behind the bars since August 2021, the investigation in this case has been completed and the charge was framed against him on 04.10.2021 by the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. The offence alleged in the FIR 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 applicant Muhammad Ikram S/O Muhammad Manaf is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty 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.

J U D G E