

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

Criminal Bail Application No.S-289 of 2021

Applicant : Bharat Son of Dongroo Mal, through Mr. Santosh Kumar-J-Kalal, Advocate.

Respondent : The State through Ms. Rameshan, Assistant Prosecutor General, Sindh.

Complainant : Muhammad Khan Son of Mushtaque Ali through Miyan Taj Muhammad Keerio.

Date of hearing : **08.11.2021**

Date of Order : **08.11.2021**

**O R D E R**

**AMJAD ALI SAHITO, J:-** Through the instant bail application, the applicant/accused above named seeks his pre-arrest bail in Crime No.31 of 2021, under section 489-F P.P.C, registered at P.S Khipro, after his bail plea was declined by the learned Additional Sessions Judge, Khipro, vide order dated 12.04.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the cheque in question was not issued in favour of complainant and there is no proof with the complainant regarding agreement with the applicant/accused but there was agreement with the father of complainant and applicant/accused has paid total consideration amount and there is no outstanding amount against him. He further argued that the complainant has occupied over the leased crop of applicant/accused and stolen away the cheque book and other valuable documents from the hut of applicant/accused. He also argued that the applicant/accused has already filed F.C. Suit No.27 of 2021 for Specific Performance of Contract before Senior Civil Court Khipro, hence, matter is of civil nature; that the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. He lastly prayed for confirmation of interim pre-arrest bail.

4. On the other hand, learned counsel for the complainant as well as learned Assistant Prosecutor General, Sindh submit that there is documentary evidence available on record against the applicant/accused; there is no malafide intention of complainant to

implicate the applicant/accused in false case. They further submitted that the cheque was issued by the applicant and huge amount of more than Rs.21,75,000/- is involved, as such, the memo of the bank is very much clear and nowhere has been mentioned if the signature of the applicant/accused was different from his signature being account hold but the memo reflects that due to insufficient funds in his account the cheque was bounced which was dishonestly issued by the applicant on the presentation in the account; that the Manager of the concerned bank had marked the memo with return of the cheque due to insufficient funds in the account of the applicant/accused and no record is submitted if the cheque was missed/stolen. They lastly prayed for dismissal of interim pre-arrest bail.

5. I have heard learned counsel for the applicant as well as counsel for the complainant and Assistant Prosecutor General, Sindh having also gone through the material available on record.

6. From perusal of record it reflects that father of the complainant being landlord had given a banana crop on lease basis to the applicant/accused and in lieu thereof the applicant had issued a cheque No.1727509684 dated 20.02.2021 of his account No.00100601-010027796 of MCB Bank Khipro Branch amounting to Rs.21,75,000/- but on presentation the same was dishonoured due to insufficient funds, hence the ingredients of section 489-F P.P.C are very much applicable in this case which shows that applicant/accused had no intention to pay the outstanding amount to the complainant party. The 161 Cr.P.C statements of PWs have supported fully the version of the complainant. The applicant/accused has not been able to point out, even obliquely to any transaction in respect of banana crop allegedly leased to him and purportedly given cheque to someone else as surety, as such, consequences of failure the learned counsel also fails to point out any mala fide or animosity against the complainant which is requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law reported as ***Syed HASNAIN HAIDER Vs. The STATE and another [2021 SCMR 1466]***. It is well settled principle of law that the deeper appreciation of evidence is not permissible at the bail stage and only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicant with the alleged offence. It am also taking guideline from the case law reported as ***Rana ABDUL KHALIQ Vs. The STATE and others [2019 S C M R 1129]*** wherein the Hon'ble Supreme Court of Pakistan has held as under:

***“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of***

*usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner 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 criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”*

7. In view of above discussion, the applicant/accused has failed to make out a good case for confirmation of interim pre-arrest bail. Consequently, the bail application is dismissed and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 14.04.2021 is hereby re-called.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE