

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

Criminal Bail Application No. S-177 of 2021

**Applicant:** Muhammad Riaz Qureshi, through Mr. Mohsin Ali Almani, advocate.

**Complainant:** Shakeel Ahmed through Mr. Amjad Hussain Shar, advocate.

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

**Date of hearing:** 3.9.2021

**Date of decision:** 3.9.2021

**ORDER**

**KHADIM HUSSAIN TUNIO, J-** Through captioned application, the applicant seeks confirmation of pre-arrest bail in Crime No.470/2018, registered with Police Station Site Kotri for offences punishable u/s 489-F, 420 and 506 PPC.

2. It is alleged that the complainant ran a Real Estate Agency who was acquainted with the present applicant who had introduced the complainant to one Jumah Shar and got involved in a business of cattle with them. On 05.01.2018, he purchased cattle and paid an amount of Rs. 1,750,000/- in the presence of witnesses, though he was not delivered the cattle. On 20.03.2018, the principle accused Jumah, Muhammad Parial, Muhammad Ibrahim, Ameer Bux and Hakim came to him and issued him a cheque bearing No.45144630 for the amount they owed to the complainant being Rs.1,750,000/-. When the complainant presented the cheque with the concerned bank, the same bounced due to insufficient balance. The complainant approached the principle accused regarding the same, but was allegedly given death threats. Hence F.I.R was lodged by him against the applicant.

3. Learned counsel for the applicant argued that the applicant is innocent and the alleged offence has not been committed by him; that the allegations against the applicant are ill-motivated and baseless; that there was no liability or obligation of complainant against the

applicant nor was there any outstanding payment of his towards the complainant; that the issuance of cheque is denied as he did not issue the same, rather it was issued by the principle accused; that there is no proof as in whose presence the applicant made any transaction with regard to the business between the complainant and the principle accused; that the investigation of the case has concluded. He therefore prays for the grant of bail to the applicant.

4. Learned counsel for complainant and learned state counsel, in one voice, opposed the grant of bail to the applicant.

5. I have heard the learned counsel for the parties and have also examined the record, so made available, carefully. A perusal whereof suggests to draw inference that the cheque that was issued was issued by the principle accused and not by the applicant. The applicant did not issue the said cheque to the complainant, hence the application of S. 489-F will be determined at trial and requires consideration. As far as S. 420 and 506 PPC are concerned, both are bailable and do not fall within the prohibitory clause of S. 497 Cr.P.C. The Courts, in such-like cases where offence falls within the non-prohibitory clause, consider favourably by granting bail as a rule but decline to do so in the exceptional cases. As far as exceptional circumstances are concerned those are to be taken into consideration depending upon each case. Reference may be made to the case of *Tariq Bashir and 5 others v. The State* **PLD 1995 SC 34** wherein it has been iterated that section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years and (ii) offences punishable with imprisonment for less than ten years, the principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal and exception. Therefore, the bail will be declined only in extraordinary and exceptional cases. This principle has also been reiterated in the case of "*Subhan Khan v. The State*"(2002 SCMR 1797). Besides that, the alleged cheque was issued on 20.03.2018 and the earlier transaction had taken place on 05.01.2018, however the FIR was lodged with a shocking delay on 19.12.2018. For this delay, no explanation

was provided as the complainant remained silent for almost 9 months. He did not even disclose the words uttered by the accused when issuing him threats of dire consequences as well. It is made clear however that the case of the applicant is quite distinguishable from that of the principle accused.

6. For what has been discussed above, ad-interim pre-arrest bail already granted to the applicant by this Court was confirmed on the same terms and conditions vide short order even dated. These are the reasons for the short order dated 03.09.2021.

7. Before parting with this order, it may be observed that the observations made hereinabove are tentative in nature and the trial Court shall proceed with the trial of the case without being influenced from the same in any manner.

**J U D G E**

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