

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

Criminal Bail Application No. S-220 of 2021

Applicant: Yasir Razzak Memon alias Yasir Memon, through Syed Shafique Ahmed Shah, Advocate.

Complainant: Imran Khan through Mr. Sher Dil Ansari, Advocate.

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

Date of hearing: 17.9.2021

Date of decision: 17.9.2021

ORDER

KHADIM HUSSAIN TUNIO, J- Through captioned application, the applicant seeks confirmation of pre-arrest bail in Crime No. 109/2020, registered with Police Station Cantonment Hyderabad for offences punishable u/s: 489-F, 420 and 34 PPC.

2. It is alleged that the complainant invested an amount of Rs.15,625,000/- in the applicant Yasir Razzak Memon's business in Fatima Complex Scheme at a 10% profit rate on 01.05.2020. As profit, the CEO of Fatima Complex Scheme Imran Pathan, through present applicant and marketing manager Amrat Chavla, issued a cheque bearing No. 164715539 on 02.08.2020 of Aitemad Bank for an amount of Rs.2,700,000/-. When the complainant went to deposit the same in his account, same was bounced. The complainant contacted the applicant and met with them at Gul Center where they got into a car together to negotiate, but allegedly the applicant took aim with his pistol at the complainant, threatened him of dire consequences and then left. Hence F.I.R was lodged.

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 CEO Imran Pathan; that the applicant was also not the beneficiary of the alleged amount; that the applicant had purchased the land in Deh Barachi Jageer from one Muhammad Muzaffar through registered sale deed No. 678 dated 28.07.2020; that the complainant has registered the instant case against the applicant to pressurize him and blackmail him; that the investigation of the case has concluded.

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 by the CEO of the Fatima Complex Imran Pathan and not by the applicant. The applicant did not issue the said cheque to the complainant, hence the application of S. 489-F PPC will be determined at trial and requires consideration. As far as S. 420 is concerned, same isailable and does 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 an exception. Therefore, the bail is to 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) and in **Criminal Petition No. 529 of 2021** titled "*Iftikhar Ahmad v. The State*".

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 17.09.2021.

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

Muhammad Danish Steno*