

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 157 of 2022

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application :

**22.02.2022** :

Mr. Muhammad Bin Abdul Malik, advocate for the applicant  
a/w the applicant Masood Hussain.

Mr. Muhammad Fahim Zia, advocate for the complainant  
a/w the complainant Qazi Zahoor Ahmed.

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

**NADEEM AKHTAR, J.** – Through this application under Section 498 Cr.P.C., the applicant / accused Masood Hussain has prayed that he may be admitted to bail pending trial in Crime No.43/2015 registered against him on 18.02.2015 at P.S. Shah Faisal Colony Karachi, Korangi, under Sections 420 and 489-F PPC. Vide order dated 26.01.2022, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.100,000.00 and a P.R. bond in the like amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Qazi Zahoor Ahmed, who is the real brother of the applicant / accused, there is a family dispute between the parties with regard to the share inherited by them from the estate of their late father and also a dispute between them regarding financial matters ; the applicant had given him two cheques for Rs.5,000,000.00 (dated 10.03.2014) and Rs.14,000,000.00 (dated 20.08.2014) ; and, the said cheques were presented on the dates mentioned therein, but the same were dishonoured. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant on 09.12.2021 by the learned II<sup>nd</sup> Additional Sessions Judge Karachi East in Bail Before Arrest Application No.6295/2021. However, vide order dated 24.12.2021 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge.

3. It is contended by learned counsel for the applicant that the alleged claim of the complainant is fictitious, bogus and malafide ; there is an inordinate delay in lodging the FIR ; the complainant has concealed the real facts ; till date the complainant has not initiated any recovery proceedings against the applicant for recovery of the amount of the subject cheques ; 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. Learned counsel for the complainant and Addl. P.G. submit that the applicant is not entitled to the concession of bail as he has not disputed the execution of the cheques, and there is no plausible explanation as to why and under what circumstances the cheques came into the possession of the complainant and why the same were dishonoured upon presentation. They further submit that this fact alone is sufficient to show the dishonesty on his part.

5. I have heard learned counsel for the applicant and complainant and the learned Addl. P.G. and have also perused the material available on record. 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. There is an admitted delay of eleven (11) months and six (06) months in lodging the FIR in respect of cheques for Rs.5.000 million and Rs.14,000,000.00, respectively. Therefore, this case requires further inquiry in my opinion. The material evidence relating to the subject cheques would be documentary which would either be with the complainant or with the banks of the complainant and applicant. The offence alleged against the applicant 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.

6. 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. Therefore, 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.

7. In view of the above, the interim bail granted to the applicant / accused Masood Hussain vide order dated 26.01.2022 is hereby confirmed on the same terms and conditions.

This bail application stands disposed of in the above terms.

J U D G E