

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Bail Application No. 173 of 2022**

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

For hearing of bail application :

**22.02.2022 :**

Mr. Barkat Ali Metlo, advocate for the applicant  
a/w the applicant Muhammad Adnan.

Complainant Ashfaque Ahmed present in person.

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

.....

**NADEEM AKHTAR, J.** – Through this application under Section 498 Cr.P.C., the applicant / accused Muhammad Adnan has prayed that he may be admitted to bail pending trial in Crime No.187/2021 registered against him on 05.05.2021 at P.S. Gizri Karachi South, under Section 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 Ashfaq Ahmed, he had given an amount of Rs.40,000,000.00 through cheques to the applicant for business purpose ; an agreement was executed between them according to which the applicant was obliged to construct three bungalows in Scheme 33 for the complainant ; as the applicant had failed in performing his agreed part of the contract, the complainant asked him to return the amount ; an amount of Rs.10,000,000.00 was returned to him by the applicant, and for the remaining amount the applicant issued four cheques in his favour ; and, the said cheques were dishonoured upon presentation. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant on 08.05.2021 by the learned XI<sup>th</sup> Additional Sessions Judge Karachi South in Bail Before Arrest Application No.1709/2021. However, vide order dated 20.05.2021 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 malafide ; there is delay of about forty five days in lodging the FIR ; 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. The complainant, who is present in person, reiterates the contents of the FIR and states that 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 has not disputed the execution of the cheque, 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 cheques were dishonoured upon presentation. 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 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. The dates on which the subject cheques were allegedly issued by the applicant are not disclosed in the FIR. There is an admitted delay of about forty five days in lodging the FIR. Therefore, this case requires further inquiry in my opinion. 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. 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 Muhammad Adnan 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