

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.292 of 2021

Applicant : Muhammad Shan S/o Muhammad Saleem
Through Mr. Muhammad Akram Advocate

Complainant : Khurram Zubair S/o Zubair Aslam
Through Mr. Rehan Kayani, Advocate

Respondent : The State
Through Mr. Saleem Akhtar,
Addl. Prosecutor General, Sindh.

Date of hearing : 14.07.2021

Date of order : 14.07.2021

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.63/2021 registered under Section 489-F PPC at PS Gulberg, after his bail plea has been declined by II-Additional Sessions Judge, Karachi Central vide order 16.02.2021.

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

3. Learned counsel for the applicant/accused has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that there is a delay of about one year in lodgment of the FIR; that the applicant/accused has paid his entire dues and no outstanding amount is left. He has relied upon the statement of Nihaluddin Malik recorded under Section 161 Cr.P.C., who is a third party in this case and as per his statement, no outstanding amount against the applicant/accused. He lastly prays for confirmation of pre-arrest bail.

4. On the other hand, learned counsel for the complainant submits that an agreement is available at Page-25 of the file which shows that there was outstanding amount of Rs.7,091,200/- (Rupees Seven Million Ninety One Thousand Two Hundred Only) against the applicant/accused, out of which he had paid Rs.2,700,000/- by handing over the ownership of Honda Civic Car Model 2013 as well as Rs.700,000/- in respect of electronic goods to the Second Party and Third Party immediately after the execution of this agreement; however, the applicant/accused has paid Rs.4,500,000/- and remaining Rs.2,591,200/- is still pending against him. He lastly prays for dismissal of the instant bail application. Learned Addl. PG while opposing the confirmation of bail submits that two cheques were given by the applicant to the complainant in lieu of his legal obligation; however, the same were dishonoured with endorsement that "account is closed".

5. I have heard the learned counsel for the parties and perused the material available on record. From perusal of record, it reveals that the agreement was executed between the parties on 06.09.2019. The copy of the agreement is available in the file at Page-25. Both the parties have not denied from execution of the said agreement, which shows that there was outstanding amount of Rs.7,091,200/- against the applicant/accused, out of which the Second Party/complainant holds its share of Rs.4,691,200/- which becomes 66.15% of the total amount, whereas, Third Party holds its share of Rs.2,400,000/- which becomes 33.35% of the total amount. The applicant/accused has paid Rs.4,500,000/- against his total outstanding dues of Rs.7,091,200/-. For remaining amount, he has given two cheques to the complainant which were presented in the bank and same were dishonoured by receiving a memo in which it is written that "**account is closed**" hence, the ingredients of Section 489-F are very much applicable in this case. Prima facie sufficient material is available on record to connect the applicant/accused with commission of the alleged offence. No ill-will or enmity has been suggested against the complainant

or police to believe that the applicant/accused has falsely been implicated in this case.

6. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant 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 the investigation.

7. In view of the above, learned counsel for the applicant/accused has failed to make out a case for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicant/accused vide order dated 19.02.2021 is hereby recalled and the bail application is **dismissed**.

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