

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Crl. Bail Application No. 727 of 2021**

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

For hearing of bail application :

**25.08.2021** :

Syed Saeed Hasan Zaidi, advocate for the applicants / accused  
a/w applicants / accused Syed Muhammad Zeeshan Zakir  
(CNIC No.42101-2582982-9) and Owais Maqbool  
(CNIC No.42201-0293347-3).

Mr. Mumtaz Ali Khan Deshmukh, advocate for the complainant  
a/w complainant Muhammad Ziauddin (CNIC No.42101-8246258-7).

Mr. Abrar Ali Khichi, Addl. P.G.

.....

**NADEEM AKHTAR, J.** – Through this application, the applicants have prayed that they may be admitted to bail pending trial in the case registered against them vide FIR No.85/2021 dated 29.01.2021 under Sections 489-F, 420 and 340 PPC with P.S. Shakra-e-Faisal, Karachi. Vide order dated 30.04.2021, interim bail before arrest was granted to the applicants subject to their furnishing solvent surety in the sum of Rs.50,000.00 each and P.R. bonds in the like amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Muhammad Ziauddin, the present applicants and nine other co-accused viz. Saleem Khan, Madiha Kirmani, Khalid Kirmani, Shahzaib, Shahid Qadri, Muhammad Saad Alam, Shahbaz, Ashfaq and Fayyaz represented to him that they had launched Al-Huda Multi Cooperative Society and offered to him plots in the said Society. In view of such representation by the accused, the complainant booked Plot Nos.170 and 171 and paid an amount of Rs.1,000,000.00 to applicant No.1 Syed Muhammad Zeeshan Zakir, Saleem Khan and Shahzaib, which was confirmed by Saad Alam who is the Chairman of the above Society. A further amount of Rs.200,000.00 was paid by the complainant to co-accused Saleem Khan who issued a cheque bearing No.10478643 dated 24.12.2020 for Rs.200,000.00 in his favour and handed over the same to him, however, the said cheque was dishonored upon presentation. Upon registration of the FIR by the complainant, interim pre-arrest bail was granted to the present applicants / accused by the learned VIII<sup>th</sup> Additional Sessions Judge Karachi East vide order dated 27.03.2021 passed in Pre-Arrest Bail Application No.1580/2021, subject to their furnishing surety in the sum of Rs.40,000.00 each with P.R. bonds in the same amount. However, vide order dated 23.04.2021 the aforesaid bail application was dismissed by the learned Additional Sessions Judge.

3. It is contended by learned counsel for the applicants that the applicants have been falsely implicated by the complainant ; the subject cheque was admittedly issued by the co-accused Saleem Khan and not by the present applicants ; and, the amount of the subject cheque has been received by the complainant.

4. On the other hand, learned counsel for the complainant submits that the applicants are habitual offenders as they have defrauded many other persons by issuing bogus cheques in their favour and in case bail is granted to them, they shall continue to defraud innocent people. He also submits that a charge sheet has been submitted before the learned trial Court wherein the applicants have been specifically charged with the offence alleged in the FIR. Learned APG has adopted the above submissions made on behalf of the complainant.

5. I have heard learned counsel for the applicants and complainant and the learned APG and have also perused the material available on record. It is specifically alleged by the complainant in the FIR that the co-accused Saleem Khan had issued the subject dishonored cheque in his favour, and no such specific role has been assigned in the FIR to the present applicants. Thus, it is an admitted position that the subject dishonored cheque was issued by co-accused Saleem Khan and not by the present applicants. It is a matter of record that the said co-accused Saleem Khan has already been granted post-arrest bail by learned XIX<sup>th</sup> Civil Judge and Judicial Magistrate Karachi East. The allegation in the FIR against the present applicants and other co-accused, except Saleem Khan, is that despite receiving a certain amount from the complainant, they did not hand over possession of the plots to him. Thus, the dispute alleged with reference to the present applicants, *prima facie*, appears to be of a civil nature. As post-arrest bail has been granted to the main accused Saleem Khan who had issued the subject cheque and the role of the present applicants in the FIR is not with regard to issuance of the subject cheque, and also as the offence alleged against the present applicants does not fall within the prohibitory clause of Section 497(1) Cr.P.C., I am of the view that the principle that grant of bail in such offences 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 applicants are entitled to the concession of bail.

6. Regarding the contention of learned counsel for the complainant that the applicants are habitual offenders as they have defrauded many other persons by issuing bogus cheques in their favour, no material whatsoever has been placed on record to substantiate the above. Suffice it to say the complainant will be at liberty to produce evidence in this context against the accused before the learned trial Court. Needless to say the observations made in this order are tentative in nature and shall not affect the case of any of the parties before the trial Court nor shall they influence the trial Court while deciding the case.

7. In view of the above, the interim bail granted to the applicants / accused vide order dated 30.04.2021 is hereby confirmed on the same terms and conditions-. This bail application is allowed in the above terms.

J U D G E