

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 713 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

**15.09.2021 :**

Mr. Muhammad Nadeem Khan, advocate for the applicant  
a/w the applicant.

Mr. Saqib Ali Awan, advocate for the complainant.

Ms. Rubina Qadir, D.P.G.

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**NADEEM AKHTAR, J.** – Through this application under Section 498 Cr.P.C., the applicant / accused has prayed that he may be admitted to bail pending trial in Crime No.178/2019 registered against him on 29.09.2019 at P.S. P.I.B. Colony Karachi under Sections 489-F and 420 PPC. Vide order dated 26.04.2021, 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 Muhammad Naeem, he gave an amount of Rs.2,200,000.00 to the present applicant for business purposes whereafter the applicant disappeared and finally when they met, the applicant issued a cheque bearing No.04532908 drawn on Dubai Islamic Bank in the sum of Rs.2,200,000.00 in his favour, which was dishonoured upon presentation for lack of funds. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant / accused by the learned III<sup>rd</sup> Additional Sessions Judge Karachi East vide order dated 10.04.2021 passed in Pre-Arrest Bail Application No.1937/2021. However, vide order dated 22.04.2021 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 there was an unexplained delay of about 32 months in lodging the FIR which fact alone is sufficient for the grant of bail ; the alleged claim of the complainant is fictitious and bogus as till date he has not initiated any recovery proceedings against the applicant for recovery of the amount allegedly advanced by him ; in any event there was no business or other transaction between the parties as alleged in the FIR or otherwise ; the complainant himself is an absconder in Crime

No.45/2017 registered against him and the present applicant under Sections 408, 420, 468, 471, 489-F and 34 PPC at P.S. Tipu Sultan Karachi ; whereas, the present applicant has been acquitted by the learned trial Court vide judgment dated 27.10.2018 in the aforesaid Crime No.45/2017 ; the applicant never failed to attend the proceedings in the said Crime No.45/2017 on any date of hearing, nor has he any intention of doing so before the learned trial Court in the present case ; because of the said Crime No.45/2017, wherein the applicant has been acquitted and the complainant is an absconder, the complainant has developed an enmity and grudge against the applicant who has been falsely implicated in this case ; investigation in the subject FIR has been completed, challan has been submitted and charge has been framed ; and, there is no possibility that the applicant will tamper with the evidence or will influence the witnesses of the prosecution if the interim bail granted to him is confirmed.

4. It is further contended on behalf of the applicant that the complainant, in connivance with the police, managed the proceedings pursuant to the subject FIR in such a way that the applicant was declared an absconder in the subject case without being aware of the said case or the order passed therein ; and, he came to know about the subject case in early April 2021 when he came to this Court for swearing an affidavit and found out that his CNIC had been blocked because of the order passed by the trial Court declaring him an absconder. The applicant, who is present in person, states that after the grant of the pre-arrest bail by this Court in the present bail application, he is regularly attending the case before the trial Court. He undertakes to attend the case before the trial Court on every date of hearing.

5. On the other hand, learned counsel for the complainant submits that the applicant has not alleged any malafide on the part of the complainant and/or police ; signature on the subject cheque has not been denied by the applicant nor has he disputed the fact that the subject cheque was issued by him in favour of the complainant ; a charge sheet has been submitted before the learned trial Court wherein the applicant has been specifically charged with the offence alleged in the FIR ; and, the proceedings in Crime No.45/2017 registered against the complainant have no nexus with the crime alleged against the applicant. Learned APG has adopted the above submissions made on behalf of the complainant.

6. I have heard learned counsel for the applicant and complainant and the learned APG and have also perused the material available on record. It is not disputed that according to the FIR, the date of occurrence of the alleged crime was 03.02.2017 and the alleged crime was reported on 29.09.2019. Thus there

is an admitted delay of about 32 months in reporting the alleged crime against the applicant, and such unusual and long delay has not been explained at all, let alone in a satisfactory manner, either in the FIR or during the course of hearing. The dispute alleged in the FIR appears to be that of a civil nature details whereof have not been disclosed in the FIR. In this view of the matter, this case requires further inquiry in my humble opinion.

7. It is also an admitted position that investigation in this case has been completed, challan has been submitted before the trial Court and charge has been framed. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. Moreover, 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 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. Both the offences alleged against the applicant do not fall within the prohibitory clause of Section 497 Cr.P.C. In view of the above, 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 applicant is entitled to the concession of bail.

8. 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.

9. In view of the above, the interim bail granted to the applicant / accused vide order dated 26.04.2021 is hereby confirmed on the same terms and conditions. However, if the concession of bail is misused by the applicant in any manner whatsoever or he violates his undertaking to attend the case before the trial Court on every date of hearing, the learned trial Court will be at liberty to take action against him in accordance with law, including cancellation of bail.

This bail application stands disposed of in the above terms.

J U D G E