

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1153 of 2021

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

28.09.2021 :

Mr. Ghulam Murtaza, advocate for the applicant a/w the applicant Muhammad Aslam (CNIC No.42301-0142696-7).

Mr. Maqboo-ur-Rehman, advocate for the complainant a/w the Complainant Mst. Ghazala Rasheed (CNIC No.42201-2125717-0).

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

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NADEEM AKHTAR, J. – Through this application under Section 498 Cr.P.C., the applicant / accused Muhammad Aslam son of Sardar Muhammad has sought admission to bail pending trial in Crime No.516/2020 registered against him on 22.09.2020 at P.S. Landhi Karachi under Sections 489-F and 420 PPC. Vide order dated 18.06.2021, interim bail before arrest was granted to him subject to his furnishing solvent surety in the sum of Rs.50,000.00 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 Mst. Ghazala Rasheed, the applicant / accused handed over to her two cheques of Rs.1,500,000.00 (issued by the applicant) and Rs.700,000.00 (issued by one Maroof Khan Pasha) towards balance sale consideration of the immovable property sold by her to the applicant, but both the aforesaid cheques were 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 VIIIth Additional Sessions Judge Karachi East in Pre-Arrest Bail Application No.3905/2020. However, vide order dated 10.12.2020 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 more than seven 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 she has not initiated any recovery proceedings against the applicant for recovery of the amount of the subject cheques ; on the contrary, the applicant has filed Suit No.1107/2021 before the XIth Senior Civil Judge Karachi East against the complainant for declaration and specific

performance of the agreement for sale in respect of the immovable property sold by her to him ; the matter requires further inquiry ; the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. ; investigation in the subject FIR has been completed and a charge sheet has been submitted before the trial Court ; the applicant is attending the proceedings before the trial Court regularly ; and, there is no possibility that he will tamper with the evidence or will influence the witnesses of the prosecution if the interim bail granted to him is confirmed.

4. 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 trial Court wherein the applicant has been specifically charged with the offence alleged in the FIR ; and, the applicant is not entitled to the concession of bail.

5. While adopting the above submissions made on behalf of the complainant, learned APG submits that all the ingredients of Section 489-F are present in the instant case and as such the matter does not require any further inquiry particularly when the execution of the cheque is not denied by the applicant.

6. I have heard learned counsel for the applicant and complainant and the learned APG and have also perused the material available on record. According to the FIR, the subject cheques dated 10.01.2020 and 18.02.2020 allegedly handed over by the applicant to the complainant were presented by the complainant on the dates of the said cheques, but the same were dishonoured. Despite the above position, the FIR was lodged on 22.09.2020 i.e. after about eight (08) months of the dishonouring of the cheque dated 10.01.2020 and after about seven (07) months of the dishonouring of the cheque dated 18.02.2020. Thus there is an admitted delay of about seven (07) to eight (08) months in reporting the alleged crime against the applicant. If it is assumed that the complainant was waiting to see the fate of the second cheque, even then there was a delay of about seven (07) months in lodging the FIR. 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. Moreover, the date when the subject cheques were actually handed over to the complainant by the applicant, has not been disclosed in the FIR. The dispute alleged in the FIR appears to be that of a civil nature. In view of the above, this case requires further inquiry in my humble opinion.

7. It is also an admitted position that investigation in this case has been completed and a charge sheet has been submitted before the trial Court. 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 cheques would be documentary which would either be with the complainant or with the banks of the complainant, applicant and the said Maroof Khan Pasha. 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 18.06.2021 is hereby confirmed on the same terms and conditions. However, if the concession of bail is misused by the applicant in any manner whatsoever, 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