

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-157 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

13.08.2021

Mr. Poonjo Ruplani, Advocate for applicant.
Mr. Atif Imran, Advocate for complainant.
Mr. Shahid Ahmed Shaikh, Additional P.G
Applicant is present on interim pre-arrest bail.

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NAIMATULLAH PHULPOTO, J.- Applicant / accused Pir Bux @ Asif

Nawaz seeks pre-arrest bail in Crime No.16 of 2021, registered at Police Station Badin, for offence under Sections 489-F PPC.

2. Brief facts of the prosecution case are that complainant Riaz Ahmed lodged the aforesaid F.I.R against the applicant/accused, alleging therein that he is doing the business of seed near fish market. Applicant / accused Pir Bux @ Asif Nawaz purchased seed of Rs.8,25,000/- from him on credit basis. It is alleged that on 15.10.2019 at 10:00 hours in presence of PW Ayaz Ali. He issued cheque bearing No.5118455 of Bank Al-Habib of the said amount, which was presented for encashment before the said bank but it was dishonoured for want of insufficient funds / amount. Thereafter, F.I.R was lodged. Applicant / accused filed an application for pre-arrest bail before the learned Ist Additional Sessions Judge, Badin, the same was rejected by him vide order dated 02.02.2021. Hence, applicant/accused has approached this Court for the same relief.

3. Learned Advocate for the applicant mainly contended that the cheque was issued by the applicant to complainant as security. It is further

submitted that applicant has filed civil suit for cancellation of the cheque in question. Lastly, it is submitted that allegedly offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Reliance is placed upon the case of ADNAN SHEHZAD v. The STATE (2021 P.Cr.LJ 914)

4. Learned Additional P.G assisted by learned Advocate for the complainant opposed the pre-arrest bail application mainly on the ground that the cheque was issued by the applicant and it has been dishonoured. It is further submitted that grant of pre-arrest bail is extraordinary remedy; no mala fide on part of the complainant or police have been alleged. In support of submissions, reliance is placed upon the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129).

5. I have heard learned Counsel for the parties and perused the relevant record.

6. Applicant/accused is present before the Court, admits that cheque in question has been issued by him. As regards to the contention that cheque was issued as a security, there is nothing on record to substantiate such contention. Prima facie, there appear reasonable grounds for believing that applicant/accused has committed the alleged offence. Grant of pre-arrest bail is extraordinary remedy in criminal jurisdiction. It is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide. It may be observed that it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation as

held in the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129). Relevant portion is reproduced as under:-

“2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner 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 investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”

7. Applicant / accused, who seeks pre-arrest bail, has failed to show mala fide or ulterior motive on part of the complainant or police, therefore, conditions for grant of pre-arrest bail are not satisfied in this case. As such, applicant is not entitled for concession of extraordinary relief of pre-arrest bail. Hence, application for pre-arrest bail is rejected. The interim pre-arrest bail already granted to the applicant/accused vide order dated 19.02.2021 is hereby recalled.

8. Needless to mention that the observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

