

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 307 of 2022

Applicant : Muhammad Irfan s/o. Abdul Aziz Burni,
through Mr. Muhammad Rafi, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General

Complainant : Muhammad Zaheen s/o Muhammad Farooq
Shaikh through Mr. Masroor Ahmed Dahri,
advocate

Date of hearing : 21.04.2022
Date of order : 21.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Irfan s/o. Abdul Aziz Burni seeks post-arrest bail in Crime No. 1255/2021, registered at P.S. Taimooria, Karachi under section 489-F, P.P.C. His earlier application for the same relief bearing No. 89/2022 was dismissed by the learned Assistant Sessions Judge-III, Karachi-Central vide order, dated 08.02.2022.

2. It is alleged that the applicant purchased spare parts amounting to Rs.1,25,00,000.00 from complainant Muhammad Zaheen but did not make payment and, on 15.09.2021, he issued two cheques to the complainant, bearing No. 57418586 & 57418587 amounting to Rs.2,500,000.00 each; however, the same were dishonored on being presented for encashment, for that he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case with mala fide intention and ulterior motives by the complainant; that no any cheque was ever issued to the complainant by the applicant for any purpose because he has no any business relation or any obligation towards the complainant; that on 05-12-2020 the alleged cheques with other three cheques were handed over by the applicant to

his investing partner Syed Muhammad Ameen Shah Qadri s/o Syed Habib Shah Qadri, as security in lieu of his investment vide "*Halfia Iqrarnama*", dated 05-12-2020; hence, the offence under section 489-F P.P.C. does not attract against applicant; that alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C.; that the applicant is confined in judicial custody since his day of arrest i.e. 11.01.2022 and police has submitted challan; hence, his custody is no more required by the police for further investigation; that the trial of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; hence, he is entitled to the concession of bail.

4. On the other hand, learned counsel for the complainant as well as learned Additional Prosecutor General oppose the grant of bail to applicant on the ground that the applicant purchased valuable articles from complainant but failed to repay his liability; that the applicant dishonestly issued cheques to the complainant, which were dishonoured on being presented for encashment; hence, he is not entitled to the concession of bail.

5. Heard learned counsel for the parties and perused the material available on record with their assistance.

6. As per F.I.R., two years back the complainant had supplied spare parts to applicant, amounting to Rs. 1,25,00,000/-, Later, the applicant issued alleged cheques to complainant which were dishonored. The applicant denies the allegation by taking instance that he had given alleged cheques to one Syed Muhammad Ameen Shah Qadri as security under a "*Halfia Iqrarnama*"; copy whereof is annexed with the bail application, which appears to be executed on a non-judicial stamp paper dated 25 November, 2020. Thus, it is yet to be determined at trial if the applicant issued the alleged cheques to complainant towards fulfillment of his obligation.

5. The offence under section 489-F, P.P.C. is though non-bailable but does not fall within the prohibitory clause of section 497, Cr.P.C. Prima facie, section 489-F, P.P.C. is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under section 489-F, P.P.C. The law is very liberal especially when it is salutary principle of law that in the offences which do not fall within prohibitory clause, the grant of bail is a rule while its refusal is merely an exception.

6. Accordingly, the applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (*Rupees One Lac only*) with P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

Cr. Bail Application stands disposed of.

JUDGE

Athar Zai