

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

Cr. Bail Appl. No.S-518 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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20.05.2022.

Mr. Muhammad Hashim Leghari, Advocate for applicant alongwith applicant.

Mr. Wali Muhammad Khoso, Advocate for complainant.

Mr. Abdul Waheed Bijarani, A.P.G for State.

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ZULFIQAR AHMED KHAN, J: Through instant bail application, the applicant Sajjad Hussain Shah seeks pre-arrest bail in Crime No.08 of 2022, registered at Police Station Matiari for offence under Sections 489-F PPC.

2. The allegation against the present applicant as per FIR is that he issued a cheque of Rs.80,00,000/- towards the payment of wheat purchased by him from the complainant which on presentation was dishonoured due to insufficient funds.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in the case in hand; that the FIR is delayed by more than 3 ½ months without any plausible explanation; that the brother of complainant namely Aftab Memon (now expired) was working as Manager with the applicant / accused hence the applicant had kept his cheque book with him; that complainant intended to purchase the land from applicant in a low price and on refusal he managed this case; that signature of the applicant / accused in the alleged cheque book has been managed; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. In support of his contentions learned counsel has placed reliance on the case law reported as Riaz Jafar Natiq v. Muhammad Nadeem Dar and others (2011 SCMR 1708), Muhammad Iqbal v. The State and another (2018 YLR Note 157), Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488),

Muhammad Saleem v. The State (2009 YLR 2044), Shabbir Ahmed v. Muhammad Hanif and another (2008 P.Cr.L.J 1760), Noor Ahmad v. The State and others (2020 YLR 2064) and an unreported order of this Court passed on 25.04.2022 in Criminal Bail Application No.S-266 of 2022.

4. On the other hand learned counsel for the complainant as well as learned A.P.G appearing for the State vehemently opposed the bail application on the ground that delay in lodgment of FIR has been fully explained by complainant; that applicant / accused is named in FIR with specific role that he issued a cheque which was subsequently dishonoured by the bank; that no malafide on the part of complainant is proved. In support of contentions, learned counsel for the complainant placed reliance on the case law reported as Shahid Sultan Durrani v. The State and others (2021 SCMR 827) and Abdul Jabbar and another v. The State (2021 YLR 367).

5. I have heard the learned counsel for the applicant, learned counsel for the complainant, learned A.P.G for the State and have gone through the material available on record with their assistance.

6. Admittedly, the incident as is evident from FIR is said to have taken place on 15.10.2021 whereas report thereof was lodged by complainant on 01.02.2022 after the delay of about 3½ months and no plausible explanation has been furnished by complainant for such an inordinate delay. The delay in criminal cases always held by Superior Courts to be fatal for prosecution case. Reference can be made from the case of Ayub Masih v. The State (PLD 2002 SC 1048) wherein Honourable Supreme Court has held as under:-

“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire

prosecution case and is to be taken into consideration while evaluating the prosecution evidence. It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused.”

7. There also seems some tampering on the cheque issued by applicant and such fact requires deeper appreciation which can only be decided by the trial court after recording some evidence. Signatures on the cheque and other document / sale agreement do not seem to match at a first glance. It has also been stated by the counsel for the parties that case is pending before the trial court. In the instant case, punishment provided by law for the offence with which applicant has been charged is not exceeding the limits of prohibitory clause of Section 497 Cr.P.C. Prima facie mere issuance of cheque which is subsequently dishonoured does not constitute an offence under Section 489-F PPC unless it is proved that the same was issued with dishonest intention; for payment of loan or discharging of any obligation; all ingredients are required to be proved at trial and till then the case of applicant calls for further enquiry.

8. The upshot of my above discussion is that applicant has made out a good prima facie case for his admission on pre-arrest bail and his case requires further enquiry within meaning of subsection (2) of Section 497 Cr.P.C. Consequently, instant bail application is allowed. Interim pre-arrest bail already granted to the applicant in terms of order dated 22.04.2022 is hereby confirmed on same terms and conditions. The applicant present is directed to continue his appearance before the Trial Court without fail till final decision of the main case.

The observations made hereinabove are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

Tufail