

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2266 of 2021

Applicant : Muhammad Azaib s/o Muhammad Sadiq,
through Mr. Umair Bachani, advocate

Respondent : The State, through Mr. Siraj Ali Khan
Chandio, Additional Prosecutor General.

Complainant : Muhammad Farrukh Rahat s/o Rahat Ali,
through Mr. Noor Ahmed Domki, advocate

Date of hearing : 17.05.2022
Date of order : 17.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Muhammad Azaib s/o Muhammad Sadiq through instant Cr. Bail Application, seeks pre-arrest bail in Crime No. 1500 of 2021 registered under section 489-F, P.P.C. at P.S. Shah Latif Town, Karachi. His earlier application for the same relief bearing No. 4001/2021 was dismissed by the learned Addl. Sessions Judge-IV Malir, Karachi vide order, dated 29.09.2021. He was admitted to interim pre-arrest bail by this Court vide order, dated 26.11.2021, now the matter is fixed for confirmation of the same or otherwise.

2. It is alleged that the applicant issued sixteen (16) cheques to the complainant, amounting to Rs. 8,704,662/- to repay his liabilities in respect of purchasing poultry feed by him from the complainant, which were dishonored by the bank on being presented.

3. Learned counsel for the applicant contends that the applicant is innocent and has nothing to do with the alleged offence, who has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives; that the applicant is a businessman running his business under the name and style of "M/s Shahjahan Poultry Service" in Karachi, who purchases feeds and other raw materials through different middlemen and

companies for his poultry farm and birds; that the applicant had no privity of contract or any obligation with the complainant for and against any transaction; that the alleged cheques were never handed over to the complainant company nor were they ever issued in the name of complainant's company and the same were issued to one of the middleman, namely, Abdul Rehman as surety against supply of poultry feed; that the alleged incident took place on 28-10-2019 while the F.I.R. was lodged on 08.09.2021 i.e. after delay of almost 2 years without any plausible explanation; that no invoice or transaction in relation to the business or contractual obligations between the applicant and complainant has been produced by the complainant before the I.O.; that the applicant received legal notice from the complainant, dated 29.06.2021, which was replied vide letter, dated 06-07-2021, denying all the allegations; that the applicant filed a Civil Suit No. 767/2021 before learned 1st Senior Civil Judge Malir, Karachi for declaration, cancellation of cheques, damages and permanent injunction on 09.08.2021, which is still pending adjudication; that the instant F.I.R. was lodged on 08-09-2021 after one month of filing of said Civil Suit; that it is a fit case for further enquiry, thus the present applicant is entitled for 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 has committed cheating with the complainant by not repaying him the amount of poultry feed and delivered the alleged cheques, which on presentation were dishonoured; that the alleged offence is non-bailable; that sufficient evidence is available with the prosecution to connect the applicant with the alleged offence; 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. The applicant claims that he had issued the alleged cheques to a middleman, namely, Abdul Rehman as guarantee and not to complainant. The complainant Muhammad Farrukh is the manager of Crown Feed Pvt. Limited, the company that supplied the poultry feed to applicant and all the 16 cheques have been issued in the name of said company and it is not mentioned on any of the said cheques that the same was issued by the applicant as guarantee. Hence, the alleged contention of the applicant is prima facie without support of any documentary evidence. The applicant has also not denied specifically the purchasing of poultry feed from the complainant's company. The alleged cheques have apparently been issued by the applicant in fulfillment of his obligation against purchasing of poultry feed, which carries a criminal liability. All the 16 cheques were dishonored on being presented for encashment, which shows that the same were issued by the applicant with dishonest intention; hence, ingredients of section 489-F, P.P.C. are fully attracted. Applicant has failed to show any mala fide on the part of complainant. Filing of suit cannot be a ground for the grant of bail.

7. From the tentative assessment of the evidence on record, it appears that the prosecution prima facie has sufficient evidence against the applicant to connect him with commission of alleged offence, punishable with rigorous imprisonment which may extend to three years. The counsel for the applicant has not been able to point out any special feature of the case entitling the applicant to the grant of extra-ordinary concession of pre-arrest bail. Pre-requisites for such concession i.e. malice and ulterior motive, either on the part of complainant or the police are conspicuously missing in the case. Accordingly, this application is dismissed. The interim bail granted to accused, vide order dated 26.11.2021, stands recalled.

8. Needless to mention here that the observations made herein-above are tentative in nature and would not influence the trial Court while deciding the case of applicant on merits.

JUDGE

Athar Zai