

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 106 of 2022

Applicant : Niaz Hussain Korai s/o Allah Bux, through
Mr. Abu Bakar Soomro, advocate

Respondent : The State, through Mr. Hussain Bux Baloch,
Addl. P.G.

Complainant : Nida Zaidi d/o Syed Amjad Ali Zaidi, through
Mr. Muhammad Aslam, advocate

Date of hearing : 17.05.2022
Date of order : 17.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Niaz Hussain Korai s/o Allah Bux seeks pre-arrest bail in Crime No. 806/2021, registered at P.S. Mubina Town, Karachi under sections 489-F, 420, 506-B/34, P.P.C. His earlier application for same relief bearing No. 6306/2021 was dismissed by the Court of learned IVth Additional Sessions Judge, Karachi-East vide order, dated 15.01.2022. The applicant was admitted to interim pre-arrest bail by this Court vide order, dated 20.01.2022, now the matter is fixed for confirmation or otherwise.

2. It is alleged that the applicant issued a cheque, dated 03.09.2021, amounting to Rs. 50,00,000/-, to complainant for re-payment of loan, which was dishonored on being presented by the Bank for encashment.

3. The learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case by the complainant; that the complainant invested Rs. 40,00,000/- in the year 2019-2020 in business of sale and purchase of properties against that investment, the applicant issued some cheques as security; that the applicant at various occasions repaid an amount of Rs. 38,65,000/- to complainant, which payment she acknowledged in writing made on a stamp paper, yet she did not return security

cheques to applicant despite promises; that on 09.03.2021, the lag of the applicant fractured in an accident for that he remained under treatment for six months and, therefore, he could not repay remaining amount of Rs. 1,35,000/- to complainant; that the complainant earlier lodged an F.I.R. bearing No. 57/2021, under sections 354, 406, 506-B, 504, 337-A(i), 427/34, P.P.C. which was disposed of under "C" Class of Police Rules; subsequently, the complainant managed to get an agreement signed due to undue pressure and obtained thereunder original title documents of a house and subject cheque, as security, which she mala fidely misused by presenting the same for encashment; that the applicant has already filed a civil suit bearing No. 2648/2021, before the Court of VII Sr. Civil Judge, Karachi-East, which is pending adjudication; that the alleged offence being punishable with imprisonment up to three years does not fall within the prohibitory clause of section 497, Cr.P.C.; hence, the applicant is entitled for the concession of bail.

4. On the other hand, learned counsel for the complainant and Addl. P.G. have vehemently opposed this application on the ground that the applicant has a criminal record, who has repeatedly committed the offence of fraud and cheating with the people and prosecution has sufficient evidence to connect him with the commission of alleged offence.

5. Heard, record perused.

6. The applicant claims that he had issued the alleged cheques to the complainant as security; however, admittedly no such endorsement appears on the cheque. It reflects from perusal of the alleged agreement, dated 31.03.2021, referred to by the learned counsel for the applicant, which is available on record as Annexure "D" at page No. 53 & 55 of the memo of bail application, that the applicant in fact admits his financial obligation and repayment of Rs. 50,00,000/- to complainant, and the complainant presented the subject cheque for encashment after expiry of six months on failure of the applicant to repay the

said amount, as agreed between the applicant and the complainant. The subject cheque has apparently been issued by the applicant in fulfillment of his obligation; hence, ingredients of section 489-F, P.P.C. are fully attracted and the applicant has failed to show any mala fide on the part of the complainant for lodging instant F.I.R. Filing of a civil suit cannot be a ground for the grant of bail. The record shows that the applicant and his two sons are involved in as many as five criminal cases. There appears no reason for false implication of the applicant by the complainant and police. No doubt, the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C., yet in such like cases, an accused cannot claim bail as a matter of right.

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. The counsel for applicant has not been able to point out any special feature of the case entitling the applicant to 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. Resultantly, the interim bail granted to applicant vide order, dated 20.01.2022, is recalled and the instant Cr. Bail Application is dismissed. The applicant is present in Court, he is taken into custody and remanded to Central Jail, Karachi.

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.

9. Above are the reasons of my short order dated 17.05.2022

JUDGE

Athar Zai