

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2280 of 2021

Applicant : Amjad Hussain s/o Nazeer Ahmed, through
M/s. Muhammad Iqbal Sohrani and
Muhammad Akbar, advocates

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

Complainant : Irfan Khan, through Ms. Rani Begum,
advocate

Date of hearing : 24.03.2022
Date of order : 24.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Cr. Bail Application, applicant/accused Amjad Hussain s/o Nazeer Ahmed seeks pre-arrest bail in Crime No. 747 of 2019, registered under section 489-F/506, P.P.C. at P.S. S.I.T.E., Super Highway Industrial Area, Karachi. His earlier application for the same relief bearing No. 4607 of 2021 was dismissed by the learned Sessions Judge Malir, Karachi vide order, dated 29.11.2021. He was admitted to interim pre-arrest bail by this Court vide order, dated 30.11.2021, now the matter is fixed for confirmation of interim bail or otherwise.

2. It is alleged that, on 25.09.2019, the applicant issued a cheque to complainant amounting to Rs. 1,000,000/- to repay his liabilities in respect of his trade with the complainant, which was dishonored by the bank on being presented.

3. Heard and record perused.

4. It is case of the complainant that he deals in fruits in Fruit Mandi and he paid Rs. 43,00,000/- to applicant for supply of fruits but the applicant failed to do so and on his demand, the applicant issued alleged cheque. Perusal of the record shows that the applicant belongs to District Muzaffar Garh, Punjab but the complainant neither disclosed his real address in F.I.R. nor to I.O. who

submitted charge-sheet showing his address as "house, New Shabzi Mandi, Super Highway, Karachi (*where the applicant admittedly never resided*), apparently with mala fide intention and ulterior motive not to allow him to join investigation and to show him as absconder in challan. The complainant has not mentioned the date and mode of payment of alleged amount. It also appears that the applicant has filed a suit against the complainant for settlement of account bearing No. 65/2020 before the Court of Senior Civil Judge, Muzaffar Garh, alleging therein that he entered into an agreement with the complainant for supply of fruits on commission basis, and for security purpose, he handed over five cheques to the complainant and at present an amount of Rs. 3,96,680/- is outstanding against the complainant, which he failed to pay. Hence, it is yet to be determining as to whether the alleged cheque was issued by the applicant to complainant against any liability or as security.

5. It may be observed that 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. Accordingly, the interim bail already granted to the applicant vide order dated 30.11.2021 is confirmed on same terms and conditions.

6. 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