

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Cr. Bail Application No. 419 of 2018**

**Saud Kamal S/o Kamal Pervaiz** ..... **Applicant**

**Versus**

**The State** ..... **Respondent**

Mr. Muhammad Asghar, Advocate for Applicant.

Mr. Abrar Ali Khichi, DPG for the State.

**ORDER**

**Omar Sial, J** The applicant Saud Kamal has sought pre-arrest bail in crime number 63 of 2018 registered under section 489-F P.P.C. at the Ferozabad police station in Karachi. Earlier, his pre-arrest bail application was dismissed by the learned 5<sup>th</sup> Additional Sessions Judge, East at Karachi on 15-3-2018.

2. Naseem Shoaib lodged a complaint at the Ferozabad police station on 9-2-2018 stating therein that he runs a jewellery business and that in the year 2015 he had given a loan of Rs. 3,600,000 to the applicant for business. The applicant did not return the money to Naseem. Upon Naseem's repeated reminders, the applicant gave him a cheque for an amount of Rs. 3,200,000 drawn on Bank Islami on 20-5-2016. When presented for clearance the cheque was not honored. Hence this case.

3. I have heard the learned counsel for the applicant as well as the learned D.P.G. None appeared on behalf of the complainant despite notice. My observations are as follows.

4. One of the ingredients required to be fulfilled for section 489-F P.P.C. to come into play is that the cheque that is dishonored should have been given for the payment of a loan or satisfaction of an obligation. The learned D.P.G. conceded that at the moment, apart from the assertion made by the complainant in the F.I.R., there is no other evidence on record which would prima facie evidence that the cheque in question was indeed given for the payment of a loan or satisfaction of an obligation. Admittedly there is a business relationship between the complainant and the applicant. The purpose for issuing the cheque will have to be determined at trial. It will also have to be proved at trial that the cheque was issued dishonestly, as is required by section

489-F P.P.C. An offence under section 489-F P.P.C, though a non-bailable offence, carries a potential sentence of up to 3 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C. Allegedly the loan was extended to the applicant in the year 2015 and the applicant had issued the cheque in May, 2016. The delay of nearly 2 years in lodging the F.I.R by the complainant also appears to be unexplained at the moment. In the circumstances, the learned counsel's argument that the sole purpose of this case which has been filed with malafide is to humiliate the applicant due to business difference between the complainant and the applicant, cannot be conclusively ruled out at this stage.

5. Above are the reasons for my short order of 9-4-2018 in terms of which the interim pre-arrest bail granted to the applicant on 17-3-2018 was confirmed on the same terms and conditions.

JUDGE