

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1539 of 2022

Date

Order with signature of Judge

1. For orders on M.A.No. 9186/2022
2. For hearing of bail application

Mr. Muhammad Wasim Iqbal, advocate for applicant a/w
applicant (on interim pre-arrest bail).

Ms. Seema Zaidi, Addl. Prosecutor General Sindh.
Shaikh Muhammad Jawed, Complainant is present.

Salahuddin Panhwar, J.- It is alleged that a cheque issued by applicant was bounced on its presentation, hence complainant lodged FIR No.619/2022 under section 489-F PPC at PS Preedy, Karachi. After having refused pre-arrest bail by learned trial Court, the applicant has preferred instant bail application under Section 498 Cr.P.C before this Court.

2. Learned counsel for the applicant/accused contended that applicant is innocent and has been falsely implicated in the present case by the complainant; that there is unexplained delay of 24 days in lodgment of the FIR; that blank cheque was issued by the applicant as a guarantee to one Jahanzaib but the complainant malafidely taken away and deposited it in his bank account; that the complainant has lodged the FIR with mala fide intention just to harass and humiliate the applicant. He, therefore, prayed that interim pre-arrest bail already granted to the applicant may be confirmed.

3. On the other hand, learned Additional Prosecutor General Sindh supported the impugned order by stating that cheque duly issued by the applicant was bounced on presentation, hence an offence under section 489-F PPC is made out; that delay in lodging of the FIR occurred as applicant engaged complainant in negotiations to settle the dispute, therefore, sought for dismissal of instant bail application.

4. Heard and perused the record.

5. According to the complainant, an amount of Rs.26,50,000/- was to be paid by his cousin Muhammad Rizwan to him, who is residing at

Sialkot and is carrying on his own business there. Muhammad Rizwan introduced applicant to the complainant and informed him that applicant had to pay Rs.26,50,000/- to him in fulfillment of business obligation, however, the applicant would pay the said amount to him (complainant). Applicant issued cheque in the name of the complainant, which on presentation was bounced. The applicant has not denied issuance of the cheque as well as its bouncing thereof but has claimed that it was issued as 'guarantee' to one Jahanzeb in a business deal. Said Jahanzeb has filed an affidavit in the present bail application, where he claimed that complainant had taken away said cheque from him. Surprisingly, if for the sake of arguments, it is to be true, then it is not understandable why applicant and /or Jahanzeb remained silent till registration of the FIR and why no any case has been lodged against the complainant regarding such incident. Nothing has been placed on record in support of such version and at this stage, oral submission cannot be given credence. Mere claim or denial on part of the accused would never be sufficient to disbelieve the implied presumption else the very purpose of insertion of provision of section 489-F, P.P.C would fail. During investigation, the applicant has been found guilty. The mere fact that the offence for which the applicant is charged does not attract the prohibitory clause of section 497, Cr.P.C., cannot entitle to the concession of extraordinary relief as each case is to be decided on its own facts and circumstances. Grant of pre-arrest bail is an extraordinary remedy, rooted into equity, to protect the honour and freedom of the innocent in criminal cases actuated by abuse of process of law for oblique motives and purposes; this protection cannot be extended in every run of the mill criminal case without grievously hindering the investigative process as held in the case of Abdul Aziz Memon vs. The State (2020 SCMR 313). Learned counsel for the applicant has failed to point out any malice or ulterior motive on the part of the complainant to falsely implicate the applicant in this case. Even otherwise, it is well settled that while deciding the bail application, the court has to undertake tentative assessment and no deeper appreciation of evidence is required.

6. For the foregoing reasons, the applicant has failed to make out a case for grant of pre-arrest bail, accordingly, ad-interim pre-arrest bail granted earlier to the applicant is hereby recalled and consequently, instant application is dismissed.

7. The observations made hereinabove are of tentative nature and the learned trial Court will not influence with the same while deciding the case on its own merits.

JUDGE

Sajid