

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1662 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>22nd November, 2021</u>	
<p>Mr. Muhammad Ajmal Jatoi, Advocate for applicant. Ms. Shagufta Parveen, Advocate for complainant. Ms. Robina Qadir, DPG.</p> <p style="text-align: center;">=====</p>	
<p><u>Omar Sial, J:</u> Atta Farooq has sought post arrest bail in crime number 770 of 2020 registered under sections 489-F and 420 P.P.C. at the Gulshan-e-Iqbal police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 8th Additional Sessions Judge, Karachi Central on 11-8-2021.</p>	
<p>2. Facts of the case are that the aforementioned F.I.R. was lodged by Quratul-Ain on 24-12-2020 narrating therein that she had sold her 2004 model car to the applicant on 4-9-2020 for a sale consideration of Rs. 850,000. She was given Rs. 250,000 in cash and was given two cheques for the remaining amount of Rs.600,000. The cheques bounced when she presented them at the banks counters.</p>	
<p>3. I have heard the learned counsels for the applicant and the complainant as well as the learned Deputy Prosecutor General. My observations and findings are as follows.</p>	
<p>4. There appears to be an agreement between the parties for the sale of the said vehicle. The agreement in itself prima facie has the procedure to be followed if the full payment for the vehicle is not made by the applicant to the complainant i.e. forfeiture of the amount paid by the applicant as well as return of the vehicle. It is not clear as yet whether the complainant has performed her side of the contract. Be that as it may, it has also come on record that one of the cheques was ostensibly “presented” in a bank branch which had been closed down whereas the other cheque was presented at a bank branch which reported that the signatures deferred. This aspect requires a further inquiry to determine whether the element of dishonesty as required by section 489-F P.P.C. is satisfied.</p>	

5. An offence under section 489-F P.P.C. carries a potential sentence of up to 3 years and the applicant has remained incarcerated for several months already. Although not bailable, an offence under section 489-F falls within the non-prohibitory clause of section 497 Cr.P.C. Keeping the principle enunciated in the Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I do not find any exceptional or extraordinary circumstances to deny the applicant bail. The complainant is of course at liberty to initiate any action for breach of contract if she is so advised and the law merits such an action.

6. Above are the reasons for the short order dated 11-11-2021.

JUDGE