

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 382 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

28-4-2022

Mr. M.S. Bukhari, Advocate for applicant.
Mr. Muhammad Fahad, Advocate for complainant.
Ms. Robina Qadir, DPG.

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Omar Sial, J: Ismail Bhojani has sought post arrest bail in crime number 120 of 2022 registered under section 489-F P.P.C. at the Sachal police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 4th Additional Sessions Judge, Malir on 21-2-2022.

2. A back ground to the case is that the aforementioned F.I.R. was registered on the complaint of Muhammad Hanif on 30-1-2022 who reported that he has had business transactions with the applicant during the years 2016-2017 in which he had given the applicant an amount of Rs. 70,000,000 to the applicant. In the year 2018 the parties entered into an agreement pursuant to which the applicant gave the complainant 13 cheques amounting to Rs. 40,470,000. One of these cheques in the amount of Rs. 2.5 million bounced when presented at the banks counters.

3. Learned D.P.G. who is assisted by the learned counsel for the complainant has argued that because there is an allegation in the F.I.R. that the cheque was issued by the applicant it should be treated as correct as there is ample evidence of an offence having been committed under section 489-F P.P.C. Learned counsel for the complainant added by stating that the cheque was given by the applicant to the complainant with the intention of committing a fraud. No other argument has been raised by either counsel.

4. 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.

5. I am not impressed with the arguments of the learned D.P.G. A mere statement of the complainant in the F.I.R. cannot be treated as gospel truth until and unless the same are proved at trial. Learned D.P.G. as well as the learned counsel for the complainant have both stated that there is no agreement or document to evidence either the transaction of Rs. 70,000,000 or of Rs. 44,700,000 allegedly entered into between the complainant and the applicant. It is also pre-mature at this stage to hold that the cheque in question was given by the applicant to the complainant with the intent to commit fraud. Whether dishonesty is involved in issuing of cheque is to be proved at trial when evidence is led. There is no other evidence against the applicant, as admitted by learned counsel for the complainant and learned D.P.G., which could even prima facie show the dishonesty of the applicant in issuing the cheque. It appears that a civil suit is pending in which the applicant has sought cancellation of the cheques that are in possession of the complainant.

6. Two important ingredients to establish an offence under section 489-F PPC are that that the cheque should have been issued dishonestly and that it should have been issued for the satisfaction of a loan or fulfillment of an obligation. Upon a tentative assessment it appears that to establish both ingredients, the case against the applicant is one of further inquiry.

7. An offence under section 489-F P.P.C. carries a potential sentence of up to 3 years. Although not bailable, an offence under section 489-F falls within the non-prohibitory clause of section 497 Cr.P.C. The applicant has already been in jail for 3 months. 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.

8. In view of the above, the applicant is admitted to bail subject to his furnishing a solvent surety in the amount of Rs.200,000 and a P.R. bond in the like amount to the satisfaction of the learned trial court.

JUDGE