

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 423 of 2022

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

21-03-2022

Mr. Muhammad Riaz Abbasi, Advocate for applicant.
Ms. Mehwish Shoukat, Advocate a/w complainant.
Ms. Rahat Ahsan, DPG.

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Omar Sial, J: Nobel Anthony Bhatti has sought post arrest bail in crime number 86 of 2022 registered under section 489-F P.P.C. at the Defence police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 1st. Additional Sessions Judge, Karachi South on 24-02-2022.

2. The background of the case is that the aforementioned F.I.R. was lodged on the complainant of Erum Sonia on 05-02-2022. The complainant narrated that she entered into an investment agreement with Jamshed Khursheed Bhatti and the applicant on 20-05-2018 and subsequent to that agreement she had invested an amount of Rs.1,500,000 with the promise made by the two accused that they would pay a profit of Rs.22,500 each, allegedly the accused did not fulfill their obligation and on complainant asking them for her money back the applicant issued one cheque of Rs.750,000 dated 20-12-2021 but the same was bounced when she presented it at the bank counters.

3. I have heard the learned counsels for the applicant and the complainant as well as the learned Deputy Prosecutor General. With their able assistance I have gone through the record. My observations and findings are as follows.

4. The agreement on which the complainant relies is dated 20-05-2018 however the two cheques which are said to be issued in the year 2021 are mentioned in the agreement dated 20-05-2018. Similarly, the numbers of two cheques that have been entered into the agreement have been counter-signed not by the applicant but by co-accused Jamshed Khursheed Bhatti. The agreement is also not witnessed by anybody. Learned D.P.G. confirms that the I.O. of the case has not sent this agreement to determine whether the signatures

therein are genuine or not. It has come on record that the complainant and accused are husband and wife and when they have separated, this F.I.R. has been lodged. Learned counsel for the complainant has also been unable to explain as to when these cheques were presented for encashment in the year 2021. This aspect requires a further inquiry to determine whether the element of dishonesty as required by section 489-F P.P.C. is satisfied.

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 notailable, 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. In view of the above, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs.500,000 and a P.R. bond in the like amount to the satisfaction of the learned trial court.

JUDGE