

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1815 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

21-4-2022

M/s. Rafiq Ahmed and Imtiaz Ali Channa, Advocates a/w applicant.
Mr. Imtiaz Ali Samoo, Advocate a/w complainant.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Muhammad Aamir has sought pre-arrest bail in crime number 10 of 2021 registered under section 489-F P.P.C. at the Korangi police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 8th Additional Sessions Judge, Karachi East on 31-8-2021.

2. A back ground to the case is that the aforementioned F.I.R. was lodged by Muhammad Akhtar on 3-1-2021 narrating an incident which had occurred on 20-10-2020. The complainant recorded that he has given an amount of Rs.2.5 million to the applicant for purchase of scrape but the same was not provided to him and upon complainant's repeated requests applicant issued two cheques; one for an amount of Rs.500,000 and other for Rs.2 million were given by the applicant to the complainant. The cheques bounced when he presented them at the banks counters.

3. Learned counsel for the applicant has drawn my attention to the testimony of the complainant recorded at trial which prima facie appears that he himself filled out the amount and the name on the cheque which was blank at that time.

4. Learned counsel for the complainant has argued that cheques were given to the complainant which were dishonoured as is evident from the record. Learned A.P.G. supports the impugned order.

5. I have heard the learned counsels for the applicant and the complainant as well as the learned Assistant Prosecutor General. My observations and findings are as follows.

6. There is apparently no documentary evidence to establish that a transaction of such a nature did occur. I am also surprised that an amount of Rs.2.5 million was given by the complainant to the applicant without any documentation. Learned counsel for the complainant clarifies that receivable and payable are registered in a book which is maintained by the complainant, however, he agreed that neither such a book or an extract of such a book has been seized by the I.O. to date let alone it be examined by him to determine the true facts of the matter. The complainant has also admitted at trial that no agreement was entered into between the parties. Yet another aspect of the case is that it is an admitted position that the cheque of Rs. 2 million was issued not in favour of the complainant but one Nabeel who too is not a witness in the case.

7. 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 a case of further inquiry is made out and that the ingredients of the offence will have to be established through evidence which is yet to be led at trial.

8. 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. 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.

9. In view of the above, the ad-interim pre-arrest bail granted earlier to the applicant is confirmed on the same terms and conditions.

JUDGE

