

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-119 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of main case.

27.03.2023.

Mrs. Razia Ali Zaman Khan, Advocate for Applicant alongwith Applicant (on interim pre-arrest bail).

Mr. Sameeullah Rind, Advocate for Complainant alongwith Complainant.

Ms. Safa Hisbani, Assistant P.G.

ORDER

MUHAMMAD FAISAL KAMAL ALAM- J,- This is Criminal Bail Application with regard to offence under Section 489-F PPC registered by complainant Syed Arsalan against Applicant / accused at P.S City Hyderabad under Crime No.08 of 2023.

2. Learned Counsel states that Applicant's case is of further inquiry as the contents of F.I.R are vague with regard to issuance of subject Cheque No.10676283 for a sum of Rs.1500,000/- in lieu of one thousand Prize Bonds of Rs.1500/- each. She has relied upon the case law reported as 2022 SCMR 1467 (NAZIR AHMAD alias BHAGA v. The STATE and others) and 2022 SCMR 592 (ABDUL SABOOR v. The STATE through A.G. Khyber Pakhtunkhwa and another).

Gist of the above case law is that since maximum punishment provided under Section 489-F PPC is three years; therefore, the offence does not fall within the prohibitory clause of Section 497 Cr.P.C, and in such cases grant of bail is a rule and refusal is an exception; section 489-F PPC is

not a provision to be used for recovery of the alleged amount; where an accused denies receiving any benefit in lieu of the dishonoured cheque, such fact can be resolved after recording of evidence. In both the above cases Hon'ble Supreme Court has granted bail.

3. On the other hand, learned Counsel for the Complainant states that Applicant / accused is a habitual offender and in the past also he has defrauded other persons regarding which multiple F.I.Rs were lodged, which he produced under his Statement. Learned Counsel for the Complainant cites unreported Judgment of Hon'ble Supreme Court handed down in Criminal Petition No.185-K of 2022 and a decision of this Court in Criminal Bail Application No.S-1024 of 2022, declining the bail to the Accused. In the first case, the Hon'ble Supreme Court dismissed the petition filed against refusal of bail, on the ground that disputed cheque belongs to the bank account of petitioner but during proceeding he attempted to take a different stance, that cheque was stolen. Since no mala fide or ulterior motive was pointed out on the part of Complainant; therefore, bail was refused; whereas, in the second case this Court was of the view that Applicant / accused was not entitled for concession of pre-arrest bail as there is a prima facie evidence in shape of dishonoured cheque and other documents against him, and recording of evidence of few witnesses will not ipso facto make applicant entitled to pre-arrest bail which is meant to save an innocent person from rigor of arrest in a non-bailable offence.

4. Learned A.P.G opposes the bail and has submitted the Bank Report under her Statement today, showing the subject cheque No.10676283 was dishonoured due to insufficient funds in the Bank Account of Applicant / accused maintained at Bank Al-Habib Limited, at Old Bahawalpur Road, Multan Branch.

5. Learned Counsel for the Applicant has produced the Judgment in Crime No.11 of 2022 in which Applicant / accused has been acquitted. The perusal of the record shows that till date Applicant / accused has not been convicted in any case as nothing contrary has been brought on record. Secondly, with regard to obligation arising of the subject cheque, further evidence / inquiry is required, inter alia, relating to the Prize Bonds. The challan has been submitted before the learned Trial Court; hence, Applicant is not in a position to influence the witnesses or interfere in the investigation. Consequently, following the case law cited by the learned Counsel for the Applicant, ad-interim pre-arrest bail granted earlier to the Applicant / accused is hereby confirmed; however, surety is enhanced equivalent to the amount of cheque, that is, Rs.1500,000/- (Rupees Fifteen Lacs); out of which Rs.300,000/- have been deposited and the Applicant / accused will furnish surety for the sum of Rs.1200,000/- (Rupees Twelve Hundred Thousand Only) with P.R Bond in the like amount to the satisfaction of the learned Additional Registrar of this Court. It is clarified that this is a tentative assessment and if the bail is misused, the learned Trial Court can pass an appropriate order. It is expected that learned Trial Court will decide the matter preferably within two (02) months from today.

The Bail application stands disposed of.

JUDGE