

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2259 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

29-03-2023

Mr. Imtiaz Ali, advocate a/w applicant,
Mr. Mazhar Shah, Advocate for complainant.
Ms. Robina Qadir, Additional P.G.

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Omar Sial, J: Mohammad Amir Jamil has sought pre-arrest bail in crime number 73 of 2022 registered under section 489-F P.P.C. at the Artillery Maidan police station in Karachi. Earlier, his application seeking bail was dismissed on 29.10.2022 by the learned 3rd Additional Sessions Judge Karachi, South.

2. A background to the case is that the aforementioned F.I.R. was registered on 9.7.2022 on the complaint of one Salim who reported an incident which had occurred between 12.10.2021 and 21.06.2022. Salim recorded that he is in the business of men's garments and that the applicant, alongwith his family, would come to him as a customer. They two developed a good relationship. In the year 2019 the applicant asked Salim that he was about to start a business and if Salim would invest in it, the applicant would give him a profit. Salim collected Rs. 27,000,000 and gave them to the applicant. The applicant paid Salim an amount of Rs. 1,500,000 but then stopped making any further payments. When Salim demanded the money, the applicant gave him a number of cheques for different amounts. When the cheques were presented at the bank's counters for clearance, all of them bounced.

3. I have heard the learned counsels for the applicant as well as the complainant and the learned Addl.P.G. My observations and findings are as follows.

4. The learned counsel for the complainant has been unable to show to me any evidence which would prima facie prove that the amount alleged to be owed by the applicant to the complainant was given to him. He has however referred to an investment agreement ostensibly entered into between the two men. Prima facie this agreement shows that 3 cheques of Rs. 1,000,000 were given by the applicant to the complainant, however it also seems that the cheques listed in the F.I.R. do not include those that are specified in the agreement. Learned counsel agreed with the anomaly but stated that the bank statements of the complainant would shed more light on the transactions. At this bail stage however that would tantamount to a deeper appreciation of evidence. One important ingredient for an offence under section 489-F to have occurred, is that the cheque in question should have been given for the fulfillment of an obligation or satisfaction of a loan. Whether the cheques were actually issued by the applicant and if yes, for what purpose were they given, is an area for further inquiry.

5. The applicant and the complainant are friends turned foes. It seems after hearing the learned counsel that the complainant feels cheated; however, the fact that the complainant cannot show any evidence that such a large amount was given and nothing in writing was taken to evidence the same, makes me not exclude malafide at this preliminary stage in the allegation that has been made.

6. An offence under section 489-F P.P.C. although not bailable falls within the non-prohibitory clause of section 497 P.P.C. Keeping in mind the principles enunciated in Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), I do not see any exceptional or extraordinary reason to deny the applicant bail.

7. Above are the reasons for the short order of earlier today.

JUDGE