

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-410 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>11.05.2023</u>	<ol style="list-style-type: none">1. For orders on office objections.2. For hearing of main case. <p>Rao Faisal Ali, Advocate for complainant. Ms. RameshanOad, Assistant Prosecutor General, Sindh. ==</p>

O R D E R

AMJAD ALI SAHITO, J:-Through the instant criminal bail application, the applicant/accused seeks his pre-arrest bail in Crime No.36 of 2023, registered under section 489-F P.P.C, at P.SGharibabad, after his bail plea was declined by the learned Additional Sessions Judge-I/MCTC Mirpurkhas, vide order dated 27.04.2023.

2. The details and particulars of the F.I.R. are already available in the bail application and crime report, same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. The applicant and his counsel are called absent. On 02.05.2023 one Mr. Muhammad QasimPahore, advocate appeared in this case and argued the matter so interim pre-arrest bail was granted to the applicant but on 09.05.2023 though he was present in Court stated that now he would not argue the matter but his senior counsel will argue the matter, hence in his presence the case adjourned for today viz. 11.05.2023. Today neither the applicant nor his counsel are in attendance. At this juncture, learned counsel for the complainant states that this is a conduct of the applicant that previously before the Trial Court his pre-arrest bail was dismissed for non-prosecution and again he had filed his pre-arrest bail, as such, for last one month he is on interim pre-arrest bail. He further added that previously he was absconder but one or other pretext he is enjoying the pre-arrest bail and today he is also not present on the ground that if his bail application is dismissed for non-prosecution he will again file the same and will be delayed the matter, as such, he requests that the only requirement of law is that after filing bail application notice would only be issued to the prosecution. It is customary practice to provide a chance to the party to argue the matter. In the instant case the applicant / accused is misusing the concession of bail requests that matter may be heard and decided in accordance with law.

4. Learned Assistant Prosecutor General, Sindh also readover the FIR and states that the applicant / accused issued a cheque of Rs.30,00,000/- towards fulfillment of civil obligation and on presentation same was dishonoured, as such, section 489-F P.P.C is very much applicable in this case and no ground of enmity or ill-will has been taken by the applicant in the present bail application.

5. I have heard learned counsel for the parties having also gone through the material available on record.

6. Admittedly the applicant / accused had issued a cheque of Rs.30,00,000/- towards fulfillment of civil obligation which on presentation before the Bank and as per memo insufficient

balance is there. The applicant was in knowledge that there is no amount in his account, as such, he had issued a cheque deliberately and intentionally hence he has also committed cheating with the complainant party. In his bail application no ground of malafide or ill-will has been agitated by the applicant/accused on the part of the complainant which is the requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan [2019 S C M R 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

7. At bail stage only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicant with the alleged offence. Resultantly, the applicant/accused failed to make out case for confirmation of interim pre-arrest bail. Consequently, the instant Criminal Bail Application is **dismissed** and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 02.05.2023 is hereby **re-called**.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

Muhammad Danish

