

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 330 of 2023

Applicant : Nadeem Mirani s/o. Pathan Khan Mirani,
through Mr. Sri Chand Oad Rajput, advocate

Respondent : The State, through Ms. Rahat Ehsan, Additional
Prosecutor General.

Complainant : Najma Bashir d/o. Abdul Bashir,
through Mr. Farhad Khan, advocate

Date of hearing : 19.06.2023
Date of order : 19.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Nadeem Mirani s/o. Pathan Khan Mirani seeks pre-arrest bail in Crime No. 278/2021, registered at P.S. Madina Colony, Karachi under section 489-F, P.P.C. His earlier application for same relief bearing No. 6509/2022 was heard and dismissed by the Court of learned IV-Additional Sessions Judge, Karachi-West, vide order dated 24.01.2023. The applicant was admitted to interim pre-arrest bail by this Court, vide order dated 16.02.2023, now the matter is fixed for confirmation or otherwise.

2. It is alleged that the applicant dishonestly issued a cheque, dated 10.09.2020, amounting to Rs. 485,000/- to complainant to repay his liabilities, which was dishonored by the bank on presentation.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant due to malafide intention and ulterior motives; that there is an inordinate delay of more than two months in lodging of the F.I.R. for that no plausible explanation has been furnished by the complainant; that applicant has never sold any property to the complainant; that subject cheque was misplaced on 24-10-2020 and such report was made to Police Station Sachal, Karachi on 26-10-2020; that the alleged offence being punishable with imprisonment up to three years does not fall within the prohibitory clause of section 497, Cr.P.C.; hence, the applicant is entitled for the concession of bail.

4. On the other hand, learned counsel for the complainant and Addl. P.G. oppose this application on the ground that the applicant has committed the offence of fraud and

cheating with the complainant; that the subject cheque was dishonoured thrice on presentation; that the prosecution has sufficient evidence to connect the applicant with the commission of alleged offence; that the applicant is a habitual offender as he is also involved in Crime/F.I.R. No. 252 of 2013 registered under Section 23(i)A of Sindh Arms Act, 2013 at P.S. Boat Basin, Karachi; hence, he is not entitled to concession of bail.

5. Heard, record perused.

6. It appears that the complainant entered into a sell agreement with the applicant for purchasing a house bearing No. 342, situated in Sector 8/C, New Saeedabad, Karachi for total sale consideration of Rs.1,200,000/-. She paid to applicant an amount of Rs.10,00,000/- in cash from 02.07.2019 to 12.07.2019 in presence of witnesses, namely, Ismail s/o Sharif and Muhammad Ali S/o Abdul Hameed and the applicant handover photostat copies of the title documents of the said house to the complainant and it was agreed between them that on payment of remaining amount of Rs. 200,000/- on 02.10.2019, the applicant would hand over possession of the said house to her; however, when on 01.08.2019, she intended to pay balance amount to the applicant and demanded possession of the said house, the applicant told her that he cancelled the sale transaction and returned her Rs. 5,15,000/- in cash and handed over a cheque bearing No. 00087223 dated 10.09.2020 drawn on Askari Bank, which she deposited in her account bearing No. 0105148714-0172 maintained at Meezan Bank, Saeedabad Branch, Baldia Town, Karachi; however, the same was dishonored by the bank on presentation due to insufficient balance. Thereafter, the complainant contacted with the applicant, who asked her that he would deposit the amount in his account on 05.10.2020 where after, on 12.10.2020, she again presented the said cheque in her account but the same was again dishonoured. The complainant again contacted with the applicant, who asked her to present the check on 06.04.2021 when the amount could be withdrawn; she then third time presented the said cheque in her account but it was again dishonoured. The subject cheque has apparently been issued by the applicant in fulfillment of his obligation; hence, ingredients of section 489-F, P.P.C. are fully attracted and the applicant has failed to show any mala fide on the part of the complainant for lodging instant F.I.R.

7. Much emphasis has been given by the learned counsel for the applicant in his arguments on the grounds that the applicant never ever entered into any sale transaction with the complainant lady and that the alleged cheque was misplaced on 24.10.2020 for that the applicant lodged an N.C. at P.S. Sachal, which cheque the complainant has misused for ulterior purpose.

8. Record shows that the complainant has placed on record a copy of the Sale Agreement which allegedly bears the signature of the applicant. Admittedly, the applicant did not submit any application regarding misplacing of his alleged cheque in the branch of the bank where he maintains his account. The applicant has not denied his signature on the alleged cheque. The applicant after recording of the F.I.R. went underground and police submitted the Charge Sheet against him by showing him absconder under section 512, Cr.P.C.; he surrendered along with an application for grant of pre-arrest bail before the trial Court when his C.N.I.C. was blocked by the NADRA in compliance of the order of the trial Court. There appears no reason for false implication of the applicant by the complainant and police. No doubt, the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C., yet in such like cases, an accused cannot claim bail as a matter of right.

9. From the tentative assessment of the evidence on record, it appears that the prosecution prima facie has sufficient evidence against the applicant to connect him with commission of alleged offence. The counsel for applicant has not been able to point out any special feature of the case entitling the applicant to grant of extra-ordinary concession of pre-arrest bail. Pre-requisites for such concession i.e. malice and ulterior motive, either on the part of complainant or the police are conspicuously missing in the case. The poor complainant lady has prima facie been deprived of her money by the applicant. Resultantly, the interim bail granted to applicant vide order, dated 16.02.2023, is recalled and the instant Cr. Bail Application is dismissed.

JUDGE

Athar Zai