

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 1815 of 2022

1. For orders on Office Objection at Flag 'A'.
2. For hearing of Bail Application.

Applicant/ Accused : Owais Ansari son of Talat Mehmood Ansari through Mr. Azhar Hussain, Advocate.

Complainant : Muhammad Atif Naeem son of Muhammad Naeem, through Mr. Abdul Razzaque Brohi, Advocate.

The State : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Date of hearing : 20-03-2023

Date of order : 20-03-2023

*FIR No.368/2022
U/s: 489-F PPC
P.S. Gulistan-e-Johar.*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/ Accused seeks pre-arrest bail in the aforesaid crime after his application has been declined by the Additional Sessions Judge *vide* order dated 30-05-2022.

2. The facts that emerge from the record are as follows. The cheque in question, alongwith 3 other cheques (total 4 cheques) were allegedly given by the Applicant to the Complainant at the same time in lieu of the amount invested by the latter with the former. The first cheque bearing No. 00000048 for Rs. 20,00,000/- was dishonoured on 11-06-2021 for insufficient funds. The second/subject cheque bearing No. 00000049 also for Rs. 20,00,000/- was dishonoured on 15-06-2021. Against the dishonor of the first cheque, the Complainant lodged FIR No. 873/2021 on 17-06-2021. Against the dishonor of the second/subject cheque the Complainant made a complaint to the police on 29-06-2021, followed by an application under section 22-A Cr.P.C. on 08-07-2021, whereupon a direction was given by the Justice of Peace on 19-07-2021 for lodging an FIR. The subject FIR (FIR No. 368/2022) was eventually registered on 24-04-2022, presumably after

disposal of a constitution petition filed by the Applicant. Against the subject FIR, the Applicant was first granted interim pre-arrest bail by this Court in Cr. Bail Application No. 1095/2022. However, that was dismissed on 30-06-2022 due to his absence. He subsequently appeared to explain that he had been taken into custody in the first FIR and recently released on post-arrest bail, and therefore he was permitted to file a fresh bail application; hence the instant bail application.

3. The facts narrated above show *prima facie* that in lodging the subject FIR the Complainant has abused the legal process. At the time he lodged the first FIR on 17-06-2021 against the dishonor of the first cheque, the second/subject cheque had already been dishonoured on 15-06-2021, and still he suppressed that incident in the first FIR. Also, in making the application to the Justice of Peace under section 22-A Cr.P.C. against the dishonor of the second/subject cheque, the Complainant did not disclose the first FIR. Apparently, the design was primarily to harass the Applicant by way of successive FIRs. Even in the subject FIR, the Complainant has made no disclosure of the fate of the remaining two cheques.

4. The fact that the subject cheque was dated 15-02-2021 and yet it was not presented by the Complainant to his bank until 15-06-2021, again goes to show that he was strategizing successive FIRs.

5. Vide order dated 16-07-2022, the Applicant has already been granted post-arrest bail by the trial court in the first FIR (FIR No. 873/2021), which was lodged on the same set of facts as admittedly both cheques were given by the Applicant to the Complainant on the same day.

6. While the dishonour of each cheque may give cause for a separate FIR, but here it is apparent that the report of dishonor of the second cheque was deliberately withheld for a successive FIR primarily to 'teach the accused a lesson'. That, in my view, is a *malafide* act *albeit* without prejudice to the question whether the

cheque was given with dishonest intention, which question remains one to be tried by the trial court.

7. In the circumstances discussed above, interim pre-arrest bail granted to the Applicant is confirmed subject to furnishing solvent surety in the sum of **Rs. 200,000/- [Rupees Two Hundred Thousand Only]** alongwith P.R. Bond in like amount to the satisfaction of the Nazir of this Court.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

SHABAN*

JUDGE