ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2623 of 2023

Date	Order with signature of Judge

For hearing of bail application

11.12.2023

Mr. Zahid Ali Metlo advocate for the applicant / accused
Mr. Talib Ali Memon, Assistant PG
Mr. Shaukat Islam advocate for the complainant

Through this bail application under Section 497 Cr.P.C., the applicant Riaz Ahmed has sought admission to post-arrest bail in F.I.R No.255/2022, registered under Section 489-F/34 PPC at Police Station Napier, Karachi. The earlier bail plea of the applicant has been declined by the Trial Court on the premise that the applicant remained an absconder as such he has lost some of his normal rights including the grant of post-arrest bail in the subject crime.

2. At the outset, the applicant has taken the plea that his Cheque Book was misplaced from the jurisdiction of the Police Station, Eidgah Karachi and he lodged such a report with the Police concerned, however, his story was not believed by the Trial Court on the premise that his address had been shown in Azam Basti Mehmoodabad. Besides the Cheques issued by the applicant/accused when presented before the bank, were dishonored on account of "Closed Account/Inactive" In such circumstances, no case under Section 489-F PPC was made out. Additionally, there is no nexus of the applicant with the business of the complainant. Learned counsel further submitted that the alleged incident had took place on 26.08.2022 and reported to police on 28.09.2022 with a delay of 26 days as such a false implication of the applicant cannot be ruled out. He has further argued that co-accused persons have been granted bail. He next argued that as per the contents of the FIR the alleged cheque was dishonored by the Bank on 26.08.2022 and the FIR was lodged on 28.09.2022 with an inordinate delay of more than one month without any explanation of delay, which created serious doubts on the part of complainant to harass and humiliate the applicant with malafide intention and ulterior motives. He has further contended that the basic ingredients to attract the 489-F PPC are completely missing according to the facts narrated in the FIR as the complainant failed to disclose how the applicant issued the present cheque and also did not mention any obligations and dishonest intention. Per learned counsel securing the

money in such a manner would be termed extortion, therefore the present FIR is based on malafide intention and ulterior motives, and the present case against the applicant requires further inquiry. He lastly prayed for allowing the bail application.

3. Learned counsel for the complainant has opposed the application and states that the learned trial Court has rightly dismissed the bail plea of the applicant and the applicant does not deserve the concession of post-arrest bail. He added that the accusation against the applicant is well founded, and the prayer of the applicant for the grant of post-arrest bail is liable to be dismissed. Per learned APG there are four ingredients of Section 489-F PPC, firstly, dishonest issuance of cheque, secondly, cheque must be issued for repayment of loan or discharge of liability, thirdly, cheque must be dishonored and fourthly, it must be dishonored at the fault of accused and not on the part of Bank. In support of his contention he relied upon the cases of *Zulfiqar Ali v The State* **2018 MLD 1521**, *Shahzad Akhtar alias Sajjad v The State* **2016 YLR 1002,** *Syed Amir Jalali v The State, and another, Muhammad Ilyas v the State* **2017 MLD 1383**, *Farman Hussain v The State* **2023 P. Cr. L.J 398** and *Liaquat Ali v The State* **2022 YLR 1662.**

4. Learned APG emphasized that the word dishonestly is defined under section 24 of the Pakistan Penal Code, which provides, that whoever does anything to cause wrongful gain to one person to cause wrongful loss to the other person is said to do that thing dishonestly." Since the applicant/accused has issued a post-dated cheque leaf but the same was dishonored, and when he knew that, he had made no arrangements for encashment of the cheque just to cause wrongful gain to him and wrongful loss to the complainant; that the cheque leaf was not issued without consideration as per section 118 of the Negotiable Instruments Act. Learned APG further argued that since, no malice whatsoever has been alleged against the complainant for falsely implicating the applicant/accused with the commission of the alleged offense, which is a condition precedent for seeking post-arrest bail, besides, it is a settled principle of law that, while deciding bail application, tentative assessment is to be made, deeper appreciation avoided and only the contents of FIR, statements of PWs are to be looked into and there is sufficient material available with the prosecution to connect the applicant/accused with the commission of the alleged offense, therefore, bail application of the applicant was rightly rejected by the learned trial court. He prayed for the dismissal of this bail application.

5. I have heard learned counsel for the parties and with their assistance examined the documents and read section 489-F PPC applied by the prosecution in the present case.

6. Tentative assessment of the record reflects that the alleged cheque was dishonored by the Bank on 26.08.2022 and the FIR was lodged on 28.09.2022 with an inordinate delay of more than 26 days without any explanation of the delay. The delay in criminal cases, particularly when it is unexplained, is always presumed to be fatal for the prosecution. In the present case, it appears that in the F.I.R. and challan prosecution has applied Section 489-FP.P.C., which does not fall within the prohibitory clause of section 497 Cr. P.C. On the subject issue, the Supreme Court has already decided the legal issue of the subject matter in the cases of *Riaz Jafar Natiq Vs. Muhammad Nadeem Dar and others* (**2011 SCMR 1708**), *Abdul Hafeez vs. The State* [**2016 SCMR 1439**], *Dr. Abdul Rauf Vs. The State* [**2020 SCMR 1258**] and *Muhammad Ramzan vs. State* [**2020 SCMR 717**], thus no further deliberation is required on the part of this Court.

7. The statute for the offense under section 489-F, P.P.C. is three years and the same also does not fall within the prohibitory clause of section 497, Cr. P.C. It is settled law that grant of bail in the offenses not falling within the prohibitory clause is a rule and refusal is an exception. On the aforesaid proposition, I am guided by the decision rendered by the Supreme Court in the case of *Muhammad Sarfaraz vs. The State* **2014 SCMR 1032** wherein bail was granted for the offense under section 489-F PPC and in the case of *Saeed Ahmed vs. The State* **1995 SCMR 170** wherein concession of bail was extended to the accused based on documentary evidence.

8. At this stage it is important to note that Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount through the present proceedings. It is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under Section 489-F PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing, its absence in the conduct of an accused to a degree that constitutes dishonesty by him within the meaning of section 489-F, P.P.C.

9. Adverting to the main point raised in the proceedings, it is to be seen whether the subject cheque was issued and presented within the time limit under the law.

10. That the learned Single Bench Lahore High Cout in the case of Anwar Masood Khan v The State (**2018 P. Cr. L.J 469**) has discussed the subject issue elaboratively and observed that according to section 84(1) of the Negotiable Instruments Act 1881, the cheque is to be produced for encashment within a reasonable time. Likewise, it is mentioned 84(2) of the same Act that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case.

11. A cheque presented for encashment before a bank, beyond a period of six months of its due date is generally regarded as a stale cheque. While looking for the "usage of trade and of bankers", within the meaning of section 84(2) of the Negotiable Instruments Act, of 1881, I have come across the following material:-

> ***(i). In Sheldon's Practice and Law of Banking (10th Edition) it is mentioned that it is necessary to distinguish between cheques termed 'out of date' in Law for purposes of negotiation and those termed 'out of date' by banker's custom. As regards the Latter, most bankers return cheques presented six or more months after the date, marked "out of date", and require the drawer's confirmation before payment".***
>
> ***(ii). In Banking Laws and Practice in India by M.L. Tannan (Fourteen Edition), it is mentioned that "unless a cheque is presented within a reasonable time after the ostensible date of its issue, it should not be honored.***

12. From above, it shows that a cheque or a negotiable instrument, presented after six months of its due date is generally termed as stale, and as per banking practice, the bank is not obliged to honor it unless instructed by the account holder. As a necessary consequence, on such a cheque no legal proceedings can be initiated.

13. Having discussed the subject point and after considering the case of the applicant for post-arrest bail, this is a settled principle that the concession of bail is a procedural relief having nothing to do with the ultimate fate of the trial. If a person, otherwise is found entitled to the concession of bail, his liberty cannot be curtailed on the ground of the charge being of heavy amount. On the aforesaid proposition I am guided

by the decision of the Supreme Court of Pakistan in the case of "*Hakim Ali Zardari v. The State*" (**PLD 1998 SC 1**) which is as under:-

> ***"Remedy of bail is an independent relief, not much depending on the ultimate result which may ensue. Such remedy can be availed of even in a case where the charge against an accused is of a grave nature involving embezzlement of a huge amount".***

14. Even otherwise, the legislatures have made the offense of 489-F, P.P.C. punishable within imprisonment of 3 years as discussed supra, and that too without any distinction to the value of the cheque as portrayed by the complainant that he was cheated by the applicant by issued the number of cheques as disclosed in the charge-sheet of a different amount. Since, the foregoing provision stands enacted without any categorization of the quantum of punishment, concerning the value of the cheque, the general principle laid down by the Supreme Court of Pakistan for the grant of bail in such like offenses is to be followed. This is a settled law that in such cases rule is bail and not jail. A deviation from this rule can only be made in exceptional circumstances if there is an apprehension of abscondence, if there is an apprehension of repetition of offense if there is an apprehension of tampering with the prosecution evidence.

15. In view of the above facts and circumstances of the case, this bail application is accepted and the applicant is admitted to bail provided he furnishes solvent surety to the tune of Rs.5,00,000/- (Rupees five lac) with P.R bond in the like amount to the satisfaction of the learned trial. The Trial Court is directed to examine the complainant within one month posieviely if the charge is not framed the same shall be framed on the next date of hearing. MIT II is directed to seek compliance of the order within time.

16. All the observations made hereinabove are tentative and shall have no bearing on the final determination of guilt or innocence by the trial Court.

JUDGE