ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2440 of 2023

Date	Order with signature of Judge

For hearing of bail application

11.12.2023

Mr. Shahbaz Sahotra advocate for the applicant / accused
Mr. Talib Ali Memon, Assistant PG
Mr. Babar Ali Shah advocate for the complainant along with complainant Mr. Khalil-uz-Zaman

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Through this bail application under Section 497 Cr.P.C., the applicant Syed Muhammad Mehdi has sought admission to post-arrest bail in F.I.R No.1020/2023, registered under Section 489-F PPC at Police Station Defence, Karachi. His earlier bail plea has been declined by the Trial Court on the ground that the applicant/accused by posing himself to be the purchaser of land in question, fetched a huge amount from the complainant by issuing false cheque worth Rs 50 Lacs with dishonest intention, which on presentation in Bank was dishonored.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant executed an agreement with the complainant on the issue of sale and purchase of the plot arising out of Survey No. 3 N Class 21 and issued one cheque dated 16.10.2019, amounting to Rs. 50,00,000/- to be drawn through Faysal Bank, Ghareebabad Branch, was deposited by the complainant in his account but the same was dishonored with the reason of insufficient funds vide memo of bank endorsement dated 15.01.2020. Such a report of the incident was given to Police Station Defence, Karachi on 24.06.2020, who registered F.I.R No. 1020/2023, under Section 489-F PPC.

3. It is inter-alia contended by learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives. He has further argued that as per FIR, the date of the incident is 12.01.2020 and FIR was lodged on 18.12.2021 there is an inordinate delay of more than one year, hence this case requires further inquiry within the meaning of under Section 497(2) Cr. P.C. He has further contended that the alleged offense carries a maximum punishment of 03 years hence does not fall within the ambit of the prohibitory class of Section 497(1) Cr. P.C. and in such cases, grant of bail is a rule and its refusal is an exception. 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.

4. 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; that 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. Learned counsel 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. Learned counsel has submitted that sufficient maternal/documents are available on record to connect the applicant/accused with the commission of offense; that the subject cheque was issued through an MOU executed between the applicant/accused and complainant which prima facie establishes that the same was being issued by the applicant/accused towards liability. Learned counsel further argued that as far as the plea of the applicant/accused that the complainant forcibly obtained cheque in question is concerned nothing has been produced that could show that the same was being obtained through said mode. Learned counsel added that the fabrication of documents explicitly establishes an offense under section 467 PPC as observed by this Court in the order whereby his pre-arrest bail was declined by this Court. As per learned counsel applicant is involved in so many cases of similar kind as such he is a habitual offender of issuing cheques and defrauding the people. In support of his contention he relied upon the cases of *Syed Hasnain Haider v The State and another* **2021 SCMR 1466**, *Shameel Ahmed v The State* **2009 SCMR 174**, *Rana Abdul Khaliq v The State* **2019 SCMR 1129,** *Syed Amir Jalali v The State and another* **2013 YLR 626**, *Zulfiqar Ali v The State* **2018 MLD 1521**, *Atta Muhammad v Muhammad Khan and others* **2018 MLD 1524** and *Imran Khan Orakzai v The State and another* **2016 MLD 1450.** He prayed for dismissal of the bail application on the analogy that his pre-arrest bail was declined by this Court with certain observation.

5. Learned APG supported the stance of the learned counsel for the complainant and 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.

6. 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.

7. The questions are whether delay in lodging the F.I.R is fatal in criminal case; and whether the cheque under the Negotiable Instruments Act 1881, is required to be produced for encashment within a reasonable time; and whether bail can be granted in cheque bounce case, when it is agitated that the cheque in question were given as a guarantee and the same were not issued towards repayment of loan or fulfillment of an obligation within the meaning of section 489-F, P.P.C.

8. To appreciate the aforesaid propositions, tentative assessment of the record reflects that the alleged cheque was issued on 16.10.2019 and presented in bank in 2020 and thereafter matter was reported to police on 18.12.2021 with a delay of approximately one year. If that be so, I am unable to understand as to why the complainant kept quiet for the aforesaid period and did not lodge the FIR on time. This prima facie supports the stance taken by the applicant. The question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. On the aforesaid proposition the Supreme Court is of the same view in the case of *Abdul Rasheed Vs.The State* **2023 SCMR 1948**. Even otherwise, 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 given to the nature of the instrument, the usage of trade, and the facts of the particular case. In

principle, 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 letter, most bankers return cheques presented six or more months after the date, marked "out of date", and require the drawer's confirmation before payment".**
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> ***(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.***

9. From above, it evinces 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.

10. So far as the delay in criminal cases is concerned, particularly when it is unexplained, is always presumed to be fatal for the prosecution. 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. Even otherwise, the legislatures have made the offense of 489-F, P.P.C. punishable within an imprisonment of 3 years, and that too without any distinction to the value of the cheque. 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 Hon'ble Supreme Court of Pakistan for the grant of bail in such like offenses are to be followed. In this regard, I am enlightened by the observation 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".**

11. In the present case, it appears that in the F.I.R. and challan, the prosecution has applied Section 489-F P.P.C. The punishment for the offense under section 489-F, P.P.C. is three years, which does not fall

within the prohibitory clause of section 497 Cr. P.C. in terms of law laid down by the Supreme Court 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**] *Muhammad Ramzan vs. State* [**2020 SCMR 717**], *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. Prima facie, the complainant had tried to convert a civil dispute into a criminal case as per the MOU agreement cited supra; and the learned trial Court has to evaluate the same judiciously, independently, whether the relevant offense is attracted or otherwise based on the plea of the complainant. Even otherwise, it has already been clarified by the Supreme Court in the cases of *Shahid Imran v The State and others* **2011 SCMR 1614** and *Rafiq Haji Usman v 5 Chairman, NAB and another* **2015 SCMR 1575** that the offenses are attracted only in a case of entrustment of property and not in a case of investment or payment of money. 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.

12. So far arguments of learned counsel representing the respondent regarding registration of other criminal cases of similar nature against the applicant is concerned, it is established principle of law that until and unless guilt is proved, accused would be deemed to be innocent; and mere registration of number of cases against the applicant, without conviction, is no ground for withholding grant of bail, if on merits he has a prima facie case, in an offence not punishable with ten years, especially when accused was not a previous convict. On the aforesaid proposition I am guided by the recent decision of the Supreme Court in the cases of *Zafar Nawaz Vs. The State* **2023 SCMR 1977,** *Syeda Sumera Andaleeb v. The State* (**2021 SCMR 1227**) and *Nazir Ahmed alias Bhaga v. The State* (**2022 SCMR 1467**). In absence of any exceptional circumstances, grant of bail to an accused is a right, and refusal is an exception, as held by the

Supreme Court of Pakistan in the cases of *Zafar Iqbal v. Muhammad Anwar and others* (**2009 SCMR 1488**), *Riaz Jafar Natiq v. Muhammad Nadeem Dar and others* (**2011 SCMR 1708**) and *Tariq Bashir and others v. The State* (**PLD 1995 SC 34**). Taking into consideration all the facts and circumstances stated above, I am of the tentative view that the case of the applicant squarely falls within the ambit of section 497(2), Cr.P.C. entitling for further inquiry into his guilt.

13. So far arguments of learned counsel representing the respondent regarding that the observation made in an order dealing with a matter of bail before arrest is fatal to the case of the applicant, suffice it to say that the observation in bail before arrest matters, do not ordinarily and should not generally affect the exercise and undertaken or to be undertaken after arrest, for grant or refusal of bail. As pre-arrest bail and bail after arrest are based on entirely different principles and the rejection of an application for the former does not have any bearing on the latter. I am sure that the Courts will follow that principle and be not prejudiced in any matter thereby. On the aforesaid proposition I am guided by the decision of the Supreme Court in the case of case of *Muhammad Hussain v. The State* (**1982 SCMR 227**).

14. In view of the above, 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 only) with P.R bond in the like amount to the satisfaction of the learned trial.

15. 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