

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 2301 of 2022

Date	Order with signature of Judge
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For hearing of bail application.

11.07.2023

Applicant is present a/w Mr. Behram Khan, Advocate.
Mr. Fazal ur Rehman, Advocate for the complainant.
Mr. Talib Ali Memon, Addl. P.G.

1. Applicant Muhammad Rafique Durrani son of Muhammad Yousuf is seeking pre-arrest bail in FIR No.599/2023, under Section 489-F PPC, at P.S. Defence, Karachi.
2. The allegation against the applicant/accused is that he issued cheques with dishonest intention which were dishonoured upon presentation in bank.
3. Per learned counsel the applicant/accused there is delay of 3 months in lodging of FIR and prompt is necessary to set the criminal law into motion. He further contended that the applicant/accused soon after availing the benefit of interim pre-arrest bail is regularly attending this Court which is a sufficient ground for its confirmation.
4. On the other hand, learned counsel for the complainant assisted by learned Addl. P.G. argued that sufficient grounds are available which connects the applicant/accused that he with mala fide and dishonest intention issued the subject cheques which are sufficient ground to constitute the alleged offence, therefore, applicant/accused is not entitled for confirmation of bail.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. At the outset delay of about 3 months in lodging of the FIR has nowhere been explained, offence falling Under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. The matter pertains to the business transaction and it is yet to be determined at trial as to whether issuance of cheques by the applicant/accuse in favour of the complainant was with its honest or dishonest intention pursuant to the liability lying against the applicant/accused. Furthermore, the evidence is documentary in nature and the same will be adjudged at the time of evidence. Soon after availing the benefit of interim pre-arrest bail, the applicant/accused is regularly attending this Court and never remained absent which would be sufficient ground for confirmation of bail.

6. It is clear that allegation can only be determined at the conclusion of the trial, where deeper appreciation of evidence will be made out whether the accused is involved in the case or not. The allegations by themselves would not constitute bar for the grant of bail in peculiar circumstances of the case. Object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Furthermore, basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars.

The prosecution has to explore every avenue to prove the guilt of applicant/accused including the element of mens rea. The basic concept of bail is that liberty of an innocent person is not to be curtailed unless and until proved otherwise. Deep appraisal and detailed discussion of evidence is not permissible and court should not cross the barrier of permissible limits of law while making tentative

assessment of the evidence at the bail stage. The exercise of this power should, however, be confined to the cases in which a good prima facie ground is made out for the grant of bail in respect of the offence alleged.

7. In view of the above discussion, the ad-interim pre-arrest bail granted to the applicant/accused vide order dated 25.11.2022 is hereby confirmed.

8. Before parting, the trial Court is directed to conclude the trial preferably within a period of 90 days. Furthermore, if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court.

JUDGE

Aadil Arab