IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1622 of 2023

Shabir Muhammad applicant through:	Mr. Muhammad Ali Waris Lari, advocate
The State, through:	Mr. Talib Memon, APG
Mst. Naheed Suhail, complainant through:	In person
Date of hearing: **& order :**	**04.08.2023**

O R D E R

Adnan-ul-Karim Memon, J. – Applicant Shabir Muhammad seeks post-arrest bail in F.I.R No.1182/2021, PS Aziz Bhatti, Karachi registered under Sections 406/468/471 PPC.

2. In a nutshell, the prosecution story as per FIR is that the complainant Mst. Naheed Suhail handed over her vehicle bearing No.BSE-670 maker Vitz Model 2017 for selling it which was subsequently sold out in the sum of Rs.2500,000/- and the applicant issued different cheques of different dates to the complainant, however, cheque bearing No.129681125 dated 31.8.2021 amounting to Rs.20,00,000/- drawn at Habib Metropolitan Bank Limited Hassan Square Branch Karachi was presented on 01.12.2021, which was bounced due to insufficient funds. The complainant reported the matter at Aziz Bhatti Police Station on 10.01.2022 after a delay of approximately one month and ten days. The applicant was arrested in the FIR and now is confined to judicial prison since his arrest. His bail plea was declined by the trial Court vide order dated 28.03.2023 on the premise that the applicant is a habitual offender.

3. Mr. Muhammad Ali Waris Lari, learned counsel for the applicant, contended that the applicant is quite innocent and has been falsely implicated in the present case with malafide intention and ulterior motives; that the complainant lodged two false FIRs of the same incident; he contended that the story as set out by the complainant in the FIR No.26/2022 is concocted. It is further contended that in that FIR the cheque was issued on 31.08.2021, while the FIR was lodged on 10.01.2022 i.e. after a delay of approximately six months, for which no reasonable explanation has been furnished. Learned counsel has raised his voice of concern about the apathy of the learned trial Court to non-suit the applicant and left him in the lurch on the premise that offense under Section 489-F is attracted though after six months the cheque becomes stale, as such no offense under Section 489-F is attracted. Besides, the applicant is in jail since December 2022 and the prosecution has failed to examine Investigating Officer. He next argued that the complainant has disclosed in FIR about a business transaction of selling her alleged car at the hands of the applicant, though the Polani Car Dealer sold out the vehicle of the complainant on open letter,

thus the case of the applicant requires further inquiry in terms of Section 497(2) Cr.P.C. Learned counsel added that the aforesaid factual position requires a thorough probe into the case which could be made after evidence is brought on the record by the prosecution in the trial. Learned counsel further argued that Sections 406 and 468 PPC are non-bailable, whereas Sections 420 and 471 as inserted in the charge sheet are bailable, however, do not fall within the ambit of the prohibitory clause of Section 497 Cr.P.C. Learned counsel emphasized that the complainant deliberately and intentionally lodged two FIRs of the same incident at the same Police Station in different Sections, thus the question of entering into sale agreement on the subject issue requires proper scrutiny which is only possible if she produces the documentary evidence before the trial Court. Learned counsel submitted that the allegations about preparing a forged agreement are false and fabricated as no such agreement has been proved before the Competent Court of law, therefore, offenses punishable under Sections 420, 406, 468, and 471 PPC (added in the charge sheet) are not made out and cognizance was erroneously taken by the learned trial Court. He prayed for allowing the bail application.

4. The complainant present in person has refuted the assertion made by the applicant and vehemently opposed the bail application on the ground that the applicant intentionally and deliberately issued the cheque to the complainant, which was later dishonored due to insufficient funds, thereafter the applicant kept the complainant on false pretexts and also prepared forged agreement and issued threats of dire consequences. The complainant submitted that she is a widow who has no male issue and she has only one daughter who also resides abroad, therefore, she is all alone after the death of her husband and thus unable to recover her amount from the applicant being a helpless poor lady as she has been cheated by the applicant, who prepared forged agreement. She further submitted that FIR was lodged and the applicant obtained pre-arrest bail which was later on canceled and applicant became a fugitive from the law and a challan was submitted under Section 512 Cr.P.C. Subsequently, he was arrested and post-arrest bail was moved which was declined by the trial Court on 18.04.2023 and thereafter another bail application was filed which was declined by the learned Additional Sessions Judge vide order dated 31.5.2023. On the query of the second FIR, she submitted that before the instant FIR, the complainant had lodged another FIR against the applicant bearing No.1182/2021 under Section 420/406 PPC at the same police station in respect of car bearing registration No.BSE-670 and instant FIR has also been lodged in respect of sell of the same car and allegedly against the sale consideration amount the cheque in question was issued which was dishonored upon presentation, hence FIR No.26/2022 under Section 489-F PPC was lodged. She further submitted that since the applicant has cheated her, therefore, another FIR No.1182/2021 was lodged against him. She prayed for the dismissal of the instant bail application.

5. Learned APG, representing the State adopted the submissions made by the complainant and further argued that the name of the applicant is mentioned in the FIR and neither transaction of funds nor issuance of cheque has been denied by the applicant. All ingredients as required for constituting offense punishable under Sections 420, 406, 468, and 471 PPC are fully available in the instant case, and keeping in view the material available on record the trial Court declined bail to the applicant. He, therefore, prayed that the bail application of the applicant is liable to be dismissed.

6. I have anxiously considered the arguments advanced by the respective parties and scanned the entire record.

7. The allegation against the applicant is that he issued a cheque to the complainant, which on presentation was dishonored, and, therefore, a criminal case under Section 489-F P.P.C. was registered against him, however, another FIR No.1182/2021 of the same incident under Sections 420, 406, 468 and 471 PPC was also registered.

8. I have noticed that out of the four alleged offenses, two offenses i.e., under Sections 420 and 471 PPC are bailable. As far as the offense under Sections 406 and 468 PPC are concerned, it is noticeable that prima facie, the ingredients of the aforesaid sections are yet to be proved before the trial Court when the alleged agreement is produced in Court by the complainant and it is for the trial Court to see pros and cons of the case.

9. It has become transparent that the matter in hand, ex-facie, seems to be civil, as it is evident from the contents of the F.I.R that there was a civil/business transaction between the parties, and both the parties agreed to the sale and purchase of car in place of certain amount which was purportedly received by the applicant, however; the complainant averred in her complaint that applicant has cheated her in the year 2021 by issuing false cheque of the huge amount in respect of sale and purchase of car and that he is no giving her valuable money.

10. Primarily, in bail matters, it is the discretion of every Court to grant the bail, but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under Sections 420, 406, 468 and 471 PPC as inserted subsequently in the charge sheet when the complainant lodged FIR No.26 of 2022 of the same incident for the offense under Section 489-F PPC and in that case, the applicant has been admitted to post-arrest bail subject to his furnishing surety of Rs.100,000/- vide order dated 04.08.2023 and facts and circumstance of the present case are similar to the case of FIR No.26/2022. Prima facie, the FIR was lodged after a delay of approximately six months, though the alleged offense took place on 31.08.2021 and was reported on 10.01.2022 after approximately 04 months. Prima facie, the complainant had tried to convert a civil

dispute into a criminal case; and the learned trial Court has to evaluate the same judiciously, independently, whether the relevant offenses are attracted or 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. 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. In the case in hand, it is the prosecution's case that the complainant agreed with the applicant about the sale and purchase of the subject car, and in lieu thereof, she received the subject cheque, and/or purported agreement was prepared.

11. Coming to the main case, the intent behind the grant of bail is to safeguard the innocent person from the highhandedness of police/complainant if any; and, very strong and exceptional grounds would be required to curtail the liberty of the accused charged for, before completion of the trial, which otherwise is a precious right guaranteed under the Constitution of the country. However, the complainant has also the right to prove his/her case before the learned trial Court beyond the shadow of a doubt, therefore, the parties ought to be left to the learned trial Court for recording evidence of the parties so that the truth may come out.

12. Besides the above, in the case of *Tariq Bashir v. The State* (**PLD 1995 SC 34**), the Supreme Court has taken stock of prevailing circumstances where under-trial prisoners are sent to judicial lockup without releasing them on bail in non-bailable offenses punishable with imprisonment of fewer than 10 years and held that "grant of bail in such offenses is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded." While elaborating exceptions, albeit it was mentioned that if there is a danger of the offense being repeated, if, the accused is released on bail, then the grant of bail may be refused but it is further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not be based on surmises and artificial or weak premise. Even otherwise to ensure that the accused may not repeat the same offense if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offense would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such ground should not be an absolute bar in the way of grant of bail. It may be noted that there is a sky-high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration. It is a settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in a particular category of offenses without placing any prohibition on such discretion.

13. Once the Supreme Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by the Supreme Court under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 has binding effect on all subordinate Courts. On the aforesaid proposition, I seek guidance from the decisions rendered by the Supreme Court in the cases of *The State v. Syed Qaim Ali Shah* (**1992 SCMR 2192**) and *Khan Asfandyar Wali and others v. Federation of Pakistan* (**PLD 2001 SC 607**).

14. I expect the Courts below to adhere to these binding principles in the future and not to act mechanically in the matter of granting or refusal of bail because the liberty of a citizen is involved in such matters; therefore, the same should not be decided in a vacuum and without proper judicial approach.

15. The applicant is behind bars since his arrest and is no more required for further investigation and concession of bail could not be withheld by way of premature punishment. Reliance is placed upon the case titled "*Husnain Mustafa Vs. The State and Another"* (**2019 SCMR 1914**). Additionally, there is a difference between post-arrest and pre-arrest bail, merely dismissal of his pre-arrest bail for non-prosecution is no ground to refuse post-arrest bail if the applicant is entitled to bail on merit.

16. In view of the facts and circumstances narrated above, I am of the considered view that the learned Courts below have erred in appreciation of the law on the subject while rejecting the bail of the applicant in both FIRs, hence, the same is set at naught, as a consequent, I am of the considered view that the case of the applicant is of further inquiry and is fully covered under Section 497(2) Cr.P.C., entitling for the concession of post-arrest bail in the light of the ratio of the judgments passed by the Supreme Court as discussed supra.

17. For the reasons discussed supra, the instant bail application is accepted. The applicant Shabir Muhammad is admitted to post-arrest bail in FIR No.1182/2021 of PS Aziz Bhatti for the offense under Sections 420/406/468/471 PPC subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One hundred thousand only) and PR Bond in the like amount to the satisfaction of the trial Court. However, the learned trial Court would be at liberty to cancel his bail application, if the applicant misuses the concession of bail.

18. The observation recorded hereinabove is tentative and shall not prejudice either party in the trial.

JUDGE