

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.516 of 2023

Date	Order with signature of Judge
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For hearing of bail application

08.8.2023

Mr. Afzal Haider advocate, holds brief for Mr. Muhammad Rizwan Khan advocate for the applicant alongwith applicant Muhammad Jahangir
Mr. Muhammad Iqbal Awan, Additional PG
Mr. Muhammad Wasif Riaz advocate for the complainant

Through this criminal bail application, the applicant Muhammad Jahangir seeks pre-arrest bail in Crime No.74/2023, registered under Section 489-F PPC at PS Malir Cantt. Karachi after his bail plea has been declined by learned VIII-Additional Sessions Judge Malir, Karachi vide order dated 06.3.2023.

2. The allegations against the applicant/accused as per the complainant that he works in Pakistan Television and also doing property business. Per complainant, the applicant/accused issued a cheque number 00000228, amounting to Rs.20,00,000/- of his account HBL, Saudabad Malir Karachi, towards payment of amount of brokerage/commission, which was dishonored on its presentation. Such a report of the incident was lodged with P.S Malir Cantt. on 14.02.2023.

3. Applicant/accused is present in person. He submitted that the complainant has lodged the instant FIR with a delay of two months with malafide intention. The cheque of the applicant/accused has been misplaced in this regard the applicant/accused made a stop payment and moved an application to the SHO regarding missing of the cheque in question. He next submitted that the applicant/accused is a businessman and a real estate builder but the complainant with the collusion of police has lodged this FIR just to blackmail the present applicant/accused. He further submitted that there is mala fide on his part to book the applicant in the present crime with an ulterior motive. He next submitted that he has paid the entire to the Principal Agent and referred to the documentary evidence available on record. He prays that the interim bail granted to him may be confirmed.

4. On the other hand, learned counsel for the complainant has argued that the complainant is a broker and as per the deal between the complainant and the accused/applicant he had to pay Rs.35,00,000/- on

account of the commission of the deal, therefore, the cheque in question was issued to the complainant. He next argued that there is no denial of issuance of cheque and signature. He next argued that the cheque was given by the applicant/accused and on presentation the same was dishonored. He further contended that the applicant has committed a serious offense of fraud and cheating with the complainant by issuing a bogus cheque: that due to an illegal and fraudulent act on the part of the applicant, the complaint has suffered set back in the business, therefore, he is not entitled to the concession of bail; that the applicant has admitted to having to deliver the cheque of the said amount to the complainant, therefore, his admission is sufficient to attract the ingredients of the offense under Section 489-F PPC as such no concession of bail may be given to the applicant. He has lastly argued that the instant bail application may kindly be dismissed.

5. Learned Additional PG also opposed the grant of bail to the applicant/accused on the ground that documentary proof is available on record and the applicant/accused has failed to establish any mala fide on the part of the complainant. He has lastly prayed for the dismissal of the application.

6. I have heard the learned counsel for the parties and perused the material available on record.

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.

8. Prima facie, section 489-F, P.P.C. is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. 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, P.P.C. The law is very liberal especially when it is the salutary principle of law that in the offenses which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is merely 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.

9. So far as contentions of the complainant that no extraordinary circumstances existed to give relief to the applicant, suffice it to say that this Court is conscious of the fact that the concept of pre-arrest bail is an extra-ordinary relief, which is limited to rare cases based upon trumped-up charges rather it has to be extended sparingly and to avail such relief of Extra-ordinary, it is obligatory to establish that the prosecution has been launched, which is based upon malafides, ulterior motives and if it is materialized, it would certainly cause irreparable loss to his reputation.

10. The Supreme Court in the recent judgment has held that such practice to grant ad-interim bail is an extension of such a remedy to act as a shield to protect innocent persons facing the highhandedness of individuals or authority against frivolous litigation. The rationale to grant ad-interim bail is synonymous with passing a prohibitory injunction; however, the concept of ad-interim bail is more precious as compared to the prohibitory injunction. In the former, the liberty of the person is involved whereas in the latter, only propriety rights are in question. The status of the accused becomes “custodia legis” during the period when ad-interim bail is granted till its final adjudication subject to furnishing of sureties to the satisfaction of the Court.

11. The provision of Sec.497(2) Cr. P.C. confers powers upon the Court to grant bail during the investigation, inquiry, or trial subject to an opinion formed by the Court that material placed before it is not sufficient to establish guilt and it still requires further inquiry into his guilt whereas Section 498 Cr. P.C deals with two situations:-

- i) *The fixation of the amount or bond according to the circumstances;*
- ii) *Conferment of powers to grant bail to a person who is not in custody;*

12. No doubt the applicant is nominated in the FIR: however it is delayed for about two months for which no reasonable explanation has been furnished by the prosecution for such inordinate delay. The delay in criminal cases, particularly when it is unexplained, always presumes to be fatal for the prosecution.

13. Keeping in view the facts and circumstances narrated above, it has made it abundantly clear that while granting pre-arrest bail, Court can consider the merits of the case in addition to the element of malafides/ulterior motives which has to be adjudged in the light of law laid down by the Supreme Court in its various pronouncements. As a consequence, courts of law are under the bounded duty to entertain a

broader interpretation of the “law of bail” while interpreting material placed before it more liberally to arrive at a conclusion that is badly required due to the apparent downfall in the standard of investigation.

14. Otherwise liberty of a person is a precious right that has been guaranteed under the constitution of the Islamic Republic of Pakistan, 1973. To abridge or curtail liberty merely on the ground of being involved in a criminal case without adjudging it on merits would certainly encroach upon the right against free life. This right should not be infringed upon, rather it has to be protected by the act of the Court otherwise it may frustrate the concept of safe administration of criminal justice.

15. The accumulative effect of the whole discussion is that this Court is of the tentative opinion that the applicant has made out a case for the grant of extraordinary relief of pre-arrest bail, hence is squarely entitled to the same. Accordingly, the interim bail already granted to the applicant vide order dated 08.3.2023 is confirmed on the same terms and conditions.

16. Needless to mention here that the observations made hereinabove are tentative and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, under law.

17. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he misuses the concession or temper with the prosecution’s evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr. P.C. Trial Court is also hereby directed to make necessary arrangements for securing the attendance of the prosecution witnesses and conclude the trial within the shortest possible time under intimation to this Court through MIT-II. Let a copy of this Order be communicated to the trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

18. This criminal bail application stands disposed of.

JUDGE