ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1395 of 2023

Date	Order with signature of Judge

For hearing of bail application

28.8.2023

Mr. Asghar Narejo advocate for the applicant
Mr. Abrar Ali Khichi Addl. P.G.

Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.185/2023, registered under Section 489-F, 420 PPC at Police Station Thatta. The earlier bail plea of the applicant has been declined by the learned Session Judge (Thatta) vide order dated 12.06.2023 in Criminal Bail Application No.799/2023.

2. The accusation against the applicant as per contents of FIR lodged by the Complainant is that he invested Rs. 500,000/- in the company of the applicant namely VFGI 2nd floor of JS Bank Thatta for the tenure of one year, on expiry of such period, the applicant in this satisfaction of such premium issued a post-dated cheque leaf bearing No.0000000023, amounting to Rs.500,000/- in favor of complainant, which was dishonored on presentation before the bank concerned due to insufficient funds. Such F.I.R No.185/2023, was registered under Section 489-F, 420 PPC at Police Station Thatta against the applicant.

3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case. The learned counsel submitted that the applicant/accused is a High School Teacher and also Head of the School and he has never been involved in an insurance company/policy business nor has mentioned any office in the FIR and the complainant did not produce any agreement against the applicant which, creates doubt on the part of the prosecution and the evidence is available in the shape of documentary which will be decided after recording of the evidence, however, the same is not cognizable and the offenses mentioned in the FIR are out of prohibition contained in Section 497 of the Code of Criminal Procedure, 1898 and in such like cases grant of bail is a rule and refusal is an exception. He argued that there is an inordinate delay of more than one year in lodging the F.I.R., which has not been explained. And it is yet to be determined whether the applicant is made guilty of an offense under Section 489-F PPC, or otherwise, which

factum requires further inquiry as contemplated under Section 497(2) Cr. PC. He lastly prayed for allowing the bail application.

4. Learned Addl. PG 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 on the ground that the complainant had invested an amount of Rs.5,00,000/- and when the policy matured on demand the applicant issued a postdated cheque, which was dishonored on presentation in the bank concerned. 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. 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 pre-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 Sections applied by the prosecution.

6. I am cognizant of the fact that the grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is the diversion of the usual course of law, arrest in cognizable cases; protection to the innocent

being hounded on trump-up charges through abuse of process of law, therefore an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill in criminal case as it seriously hampers the course of the investigation. However in the present case, it appears that in the challan prosecution has applied sections 420, and 489-F P.P.C Out of them, only one offense under Section 489-F P.P.C. is non-bailable, however, Section 420 is bailable and both the offenses do not fall within the prohibitory clause of section 497 Cr. P.C. on the subject issue the supreme Court has already decided the point involved in the present 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**].

7. Prima facie as yet no proof has been tendered to show that the amount of Rs. 500,000/- was paid to the applicant by the complainant. There is also no evidence, at this stage, about the stated ingredients of section 489-F of the Code.

8. Prima facie Section 489-F of PPC is not a provision that 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 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. In the facts of the present case, such an assessment can be made at the trial to evaluate whether any improper benefit, if at all, has been derived by the applicant on account of the investment made by the complainant with the aforesaid company, and whether the company is to be prosecuted or only a person who allegedly signed the cheque. This aspect of the matter cannot be determined at the bail stage in the present case, however, the trial court would be in a better position to thrash out the aforesaid analogy under law.

9. It is also an admitted position that the investigation, in this case, has been completed and a charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further

investigation, and there is no question of probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if his bail is confirmed. Moreover, the material evidence relating to the subject cheque would be documentary evidence, which would either be with the complainant or with the bank of the complainant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. As dishonesty is an ingredient of the offense under section 489-F of the P.P.C. The offense under Section 489-F alleged against the applicant does not fall within the prohibitory clause of Section 497(I) Cr.P.C. on the aforesaid proposition I am supported by the decisions rendered by the Supreme Court in the cases of T*ariq Bashir v. State* **PLD 1995 SC 34**, *Zafar Iqbal v. Muhammad Anwar* **2009 SCMR 1488**, *Muhammad Tanveer v. State* **PLD 2017 SC 733 and** *Sheikh Abdul Raheem v. The State etc.* **2021 SCMR 822**.

10. In view of the above, the principle that grant of bail in such offenses is a rule and refusal an exception, authoritatively and consistently enunciated by the Supreme Court, is attracted in the instant case. Therefore, the malafide of the complainant and police cannot be ruled out at this stage and point in time. Thus, the applicant is entitled to the confirmation of bail earlier granted to him vide order dated 23.06.2023.

11. In view of the above, the interim bail granted to the applicant/accused vide order dated 23.06.2023 is hereby confirmed on the same terms and conditions. However, if the concession of bail is misused by the applicant in any manner whatsoever, the learned trial Court will be at liberty to take action against him under the law, including cancellation of bail without referring the matter to this Court.

12. It is clarified that the observations made herein are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

13. These are the reasons for my short order dated 28.8.2023, whereby I confirmed the pre-arrest bail of the applicant on the same terms and conditions as discussed supra.

JUDGE