

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.955 of 2023

Applicant : Owais Saleem S/o Muhammad Saleem
None present.

Complainant : Anila Zahra D/o Noman Rasheed
Present in person.

Respondent : The State
Through Mr. Siraj Ali Khan,
Addl. Prosecutor General, Sindh.

Date of hearing : 08.08.2023

Date of order : 08.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.158/2023 registered under Section 489-F PPC at PS Ferozabad, after his bail plea has been declined by XIIth Additional Sessions Judge, Karachi East vide order 03.05.2023.

2. The details and particulars of the FIR are already available in the memo of bail application and FIR, which can be gathered from the copy of FIR attached with the application, hence, needs not to reproduce the same hereunder.

3. Applicant and his counsel are called absent without any intimation. On last date of hearing, in presence of the parties, the matter was adjourned for today. Perusal of record shows that the instant bail application has been filed on 05.05.2023 and since then it is pending without any progress, as such, learned Addl. P.G. has been directed to proceed with the matter. Accordingly, he has read over the FIR. From contents of the bail application, it appears that the applicant/accused is innocent and has falsely been implicated in this case, as

such, he has filed the instant bail application for seeking pre-arrest bail.

4. On the other hand, complainant Anila Zahra present in person submits that she has invested her entire saving amount of Rs.67 lacs with the applicant/accused for a business on the terms and conditions that he would share the profit with her. But the applicant/accused stopped payment of profit, therefore, on her insistence, he has given a cheque of Rs.67 lacs, which on presentation, became dishonoured with a memo that "amount is insufficient". She further submits that the applicant/accused is habitual offender and is involved in multiple cases of similar nature. Learned Addl. P.G. submits that in this bail application, no malafide has been pointed out by the applicant/accused against the complainant, as such, he is not entitled for confirmation of pre-arrest bail.

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

6. Admittedly, complainant Anila Zahra has given an amount of Rs.67 lacs for investment in business and thereafter, the profit was given and subsequently, applicant/accused stopped payment of profit as such she demanded to return her invested amount. On her insistence, the applicant/accused gave three cheques bearing Cheque No.10733849 of Rs.6 lacs, Cheque No.10716327 of Rs.20 lacs and Cheque No.10716328 of Rs.20 lacs which were dishonoured on presentation while receiving memo that '*insufficient amount*'. It appears that the applicant/accused despite knowing that he had no sufficient amount in his account has given the said cheque as such, he has also committed offence of fraud and cheating. Further, from the cause list it appears that there are several bail applications of the present applicant/accused fixed today before this Bench under the same section of 489-F PPC which shows that he is habitual offender and is involved in multiple cases of fraud

and cheating. At bail stage, only tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the applicant/accused, which could be the ground for false implication in this case.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a 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 criminal case as it seriously hampers the course of the investigation.

8. In view of the above, the instant bail application is **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicant/accused vide order dated 08.05.2023 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE