

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1088 of 2023

Date	Order with signature of Judge
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For hearing of bail application

11.9.2023

Mr. Tariq Shahzad Bhatti advocate for the applicant alongwith applicant.
Mr. Zahoor Shah Additional PG
Mr. Kaleem Ali Mehsood advocate for the complainant along with the complainant.

Through this bail application under Section 498 Cr. P.C., the applicant Farukh Naseem has sought admission to pre-arrest bail in F.I.R No. 144/2023, registered for an offense under Section 489-F PPC at Police Station Khawaja Ajmer Nagri, Karachi. However, during the investigation, the investigating officer added Section 420/406/34 PPC.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant issued a cheque bearing No. 0082666 amounting to Rs. 500,00,000/- (Five Crore) of Askari Bank North Karachi Branch, which had been deposited by the complainant in his account but were dishonored. Such a report of the incident was given to Police Station Khawaja Ajmer Nagri, Karachi on 09.03.2023, which registered F.I.R No.144/2023, under Section 489-F PPC. The earlier bail plea of the applicant has been declined by the learned Ist Additional Session Judge (Central) Karachi vide order dated 06.05.2023 in Criminal Bail Application No. 792/2023 on the premise that the aforesaid cheque presentation in the bank account of the complainant was dishonored which comes under the ambit of 118 of negotiable instrument Act. Besides the relief of the pre-arrest is extraordinary relief that cannot be extended to a person who has been involved in cases of a similar nature.

3. It is inter-alia, contended by learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case. He has argued that the alleged offense does not fall within the prohibitory clause under Section 497(1) Cr. P.C. He has further contended that there is an inordinate delay of about 10 days in lodging the FIR without a plausible explanation by the complainant. He has further argued that the present FIR is based on malafide intention and ulterior motives, and the present case against the applicant requires further inquiry. He next argued that this is case of civil nature which has been converted in criminal litigation. He has further argued that the entire case of the prosecution rest upon the documentary evidence which is the possession of the

complainant/police thus the applicant is not required for further investigation. He further submitted that the purported cheque dated 23.02.2023 was issued in favour of the Health Scientific Company whereas the complaint was lodged by Naeem Bashir without any authority. He lastly prayed for allowing the bail application.

4. Learned Assistant Addl. PG assisted by the learned counsel for the complainant has opposed the bail application and states that the learned trial Court has rightly dismissed the bail plea of the applicant with cogent reason, which does not call for interference by this Court and the applicant does not deserve the concession of pre-arrest bail at this stage as he has cheated the complainant with of huge amount without any lawful justification, thus no leniency is required to be shown to the applicant. He further argued that there is a bank transaction between the parties as such the applicant cannot deny his liability by taking the fake plea. He added that the accusation against the applicant is well founded and the prayer of the applicant for the grant of pre-arrest bail is liable to be dismissed. Per learned counsel for the complainant, 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 counsel 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 bearing No.0082666 in the Sum of Rs.5,00,00000/- but the same was dishonored on 27.2.2023, 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, 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 Section 489-F PPC applied by the prosecution in the present case.

6. Applicant/accused is present before the Court and admits that the cheque in question has been issued by him and favour of the health scientific company on 23.02.2023 which on presentation was dishonored vide bank memo dated 04.03.2023.

7. As regards the contention that the cheque was issued as a security, there is nothing on record to substantiate such contention. Prima facie, there appear reasonable grounds for believing that the applicant/ accused has committed the alleged offense.

8. Grant of pre-arrest bail is an extraordinary remedy in the criminal jurisdiction. It is a diversion of the usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump-up charges through abuse of process of law, therefore applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide. It may be observed that it is not a substitute for post-arrest bail in every run-of-the-mill criminal case as it seriously hampers the course of investigation as held by the Supreme Court in the case of Rana Abdul Khaliq v. The State and others (2019 SCMR 1129).

9. Applicant / accused, who seeks pre-arrest bail, has failed to show mala fide or ulterior motive on the part of the complainant or police, therefore, conditions for grant of pre-arrest bail are not satisfied in this case. As such, the applicant is not entitled to the concession of extraordinary relief of pre-arrest bail. Hence, the application for pre-arrest bail is rejected. The interim pre-arrest bail already granted to the applicant/accused vide order dated 18.05.2023 is hereby recalled.

10. Needless to mention the observations made hereinabove are tentative. The trial Court shall not be influenced while deciding the case on merits.

JUDGE