

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1419 of 2023

Date	Order with signature of Judge
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For hearing of bail application

11.9.2023

Mr. Asif Ibrahim advocate for the applicant

Mr. Munawar Ali Dahri advocate for the complainant along with the complainant.

Mr. Zahoor Shah Additional PG

Through the instant bail application under Section 497 Cr. P.C., the applicant Farhan Yaseen has assailed the order dated 22.12.2022 passed by the learned V Additional Session Judge (Central) Karachi with a prayer to grant post-arrest bail in a case registered vide F.I.R No. 784/2022, registered under Section 489-F PPC at Police Station Azizabad, Karachi, in the interest of safe administration of criminal justice.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant issued different dates of 11 cheques of the huge amount of United Bank Limited Safoora Chowk Branch, Silk Bank Shahrah-e-Faisal Branch and Bank Al Habib, Shakra-e-Pakistan Branch Karachi which had been deposited by the complainant in his account No.5012004900258801 but the same was dishonored. Such a report of the incident was given to Police Station Azizabad, Karachi on 10.08.2022, which registered F.I.R No.784/2022, under Section 489-F PPC on 14.9.2022.

3. At the very outset, it has been argued by learned counsel for the applicant that the applicant is medically infirm and suffering from various ailments including renal failure, HIV, severe lung infections, and blood pressure. He further submitted that he has falsely been roped in this case against the facts and circumstances. He contends that the applicant and the complainant were running a joint business and the cheques were not issued towards repayment of the loan or fulfillment of an obligation. He contends that even if the claim of the complainant is believed, even then at the most he can file a civil suit for recovery of the amount. He further contends that the applicant has been behind bars for the last about one year and his further incarceration would not serve any purpose. He next contends that the maximum punishment provided under the statute for the offense under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C., therefore, the

applicant deserves to be granted post-arrest bail. He has further contended that there is an inordinate delay in lodging the FIR without a plausible explanation by the complainant. He has further argued that the present FIR is based on malafide intentions and ulterior motives and requires further inquiry. He lastly prayed for allowing the bail application.

4. Learned Assistant Addl. PG assisted by the learned counsel for the complainant has opposed the 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 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. 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 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, therefore, bail application of the applicant was rightly rejected by the learned trial Court. Learned counsel added that the applicant/accused does not deny the issuance of eleven bounced cheques of huge amounts, hence, he seems to have issued the same dishonestly in the light of his knowing insufficient amount in his closed account. On the plea of filing a civil suit by the applicant, he submitted that this factum needs a deep appreciation of evidence which is not permissible to be made at the bail stage. On the plea of illness, he submitted that the applicant/accused can't be granted bail on the aforesaid ground. On the plea taken in respect of reporting the matter with the delay, he submitted that it is not so material when the same usually occurs because of depositing the cheque in the Bank. 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. The tentative assessment of the

record reflects that the alleged offense occurred between 10.08.2022 to 25.08.2022, whereas the alleged offense was reported to police on 14.09.2022 after a delay of 15 days. It is alleged that the applicant borrowed more than one crore from the complainant and in lieu thereof; he issued 11 cheques of different amounts to the complainant and presentation which were presented in the account of the complainant due to insufficient funds. The same was bounced on 10.08.2022, 25.08.2022 and 26.08.2022. Applicant claims to be suffering from various ailments. Civil litigation between the parties is stated to be pending. The complainant claims that their agreement dated 28.10.2021 wherein the applicant had admitted the claim of the complainant. The complainant filed suit for recovery of Rs.1, 97, 25,000/- before the District Judge Karachi East. The applicant was arrested in November . 2022 and incarcerated in jail and there is no progress in the trial as per the case diary sheets produced.

6. The first and foremost point that requires determination is whether the applicant could be released on bail based on medical grounds. The Supreme Court in the case of Malik Muhammad Yousafullah Khan Vs. State (PLD 1995 SC 58) has set out that medical bail may be granted based on the particular facts and circumstances of the case. However, the main considerations are that:-

- “i) *Whether the sickness or ailment with which the petitioner is suffering is such that it cannot be treated or cured inside the jail premises hospital and*
- ii) *Whether the petitioner’s continuous detention in jail is likely to affect his capacity or is **hazardous to his life**.*

7. Based on the medical report dated 1.6.2023, which prima-facie shows that the applicant was found to be suffering from serious renal failure disease. The medical case summary of the applicant shows as follows:-

Principal Diagnosis/ Reason for Admission: HIV-AIDS

“45-year-old male, Farhan Yaseen s/o Fazal Qadeer, known case of bilateral rean stone disease, admitted through Urology department for the management of HIV disease.

Hospital Course: 45 years 45-year-old male, Farhan Yaseen, was admitted to SIUT due to complaints of loose motions, nausea, and shortness of breath. His lab investigation showed serum creatinine 12.6 mg/dl, urea 310 mg/dl, serum potassium 7.4 mmol/L, and serum bicarbonate 10mmol/L. he had 4 sessions of hemodialysis on 2/2/23, 3/2/23, 5/2/23 and 6/2/23 via left femoral double lumen catheter. On 4/2/23, the patient underwent CT KUB and was found to have a right kidney with hydronephrosis and hydroureter, plus a calculus at lower calyx, and a left unhealthy kidney. The urology team planned for a right PCN on 20/2/2023, which was removed on 19.03.23. On 16/2/23, the patient was tested positive for HIV (Anti-HIV Ag/Ab= reactive) with a CD4 cell count of 13. He initiated on 08/3/23. Further workup for HIV-related opportunistic infections was positive for CMV PCB in blood and cryptosporidium in stool. Other HIV-associated infections were not detected.

8. After considering the medical report attached with the file, I am of the tentative view that the applicant's case could be considered on medical grounds as he has met the legal requirements for the grant of medical bail based on his medical report.

9. Adverting the points raised by the learned counsel for the complaint, in this regard, the Supreme Court in the case of Abdul Saboor Vs. The State (2022 SCMR 592) has categorically held that Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount, but rather for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. In this view of the matter, the question of whether the cheques were issued towards repayment of the loan or fulfillment of an obligation within the meaning of Section 489-F PPC is a question, which would be resolved by the learned trial Court after recording of the evidence. The petitioner has been behind bars for the last five months. The maximum punishment provided under the statute for the offense under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail for offenses not falling within the prohibitory clause is a rule and refusal is an exception. Reliance is placed on the case of Tariq Bashir Vs. The State (PLD 1995 SC 34).

10. This Court in several cases has held that the liberty of a person is a precious right, which cannot be taken away without exceptional foundations.

11. Tentative assessment of the record reveals that all the material is in documentary shape, the investigation is complete and the applicant is no longer required for further investigation. Besides, the complainant filed Summary Suit No. 132 of 2022 before the learned VIIIth Additional District Judge Karachi East which was dismissed in default vide order dated 12.01.2023. The record further reveals that the applicant also filed Civil Suit No. 912 of 2022 before the learned IVth Senior Civil Judge Karachi East for cancellation of the subject cheques which is stated to be pending and the fate of civil litigation is yet to be determined.

12. After considering the medical condition of the applicant and all the facts and circumstances discussed supra, I am of the tentative view that the case of the applicant squarely falls within the ambit of Section 497 (1) and (2) Cr.P.C.

13. For what has been discussed above, this bail application is accepted and the applicant is admitted to bail subject to his furnishing bail surety in the sum of Rs.500,000/- with P.R bond in the like amount to the satisfaction of learned Trial Court , however the trial Court is directed to examine the complainant on the next date of hearing positively. The complainant is present in Court is also directed to put his appearance before the trial Court without fail.

14. The observation recorded hereinabove is tentative and have will not have whatsoever in any upon merits of the case.

JUDGE