

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1458 of 2023

Applicant : Shahid Qureshi S/o Manzoor Ahmed
Through Mamoon A.K. Shirway,
Advocate

Complainant : Ashfaq Ahmed S/o Gul Hassan
None present

Respondent : The State
Through Mr. Talib Ali Memon, Asstt.
Prosecutor General, Sindh

Date of hearing : 10.08.2023

Date of order : 10.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.44/2021 registered under Section 489-F PPC at PS Darakhshan, after his bail plea has been declined by the Additional Sessions Judge-II, Karachi South vide order dated 07.06.2023.

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

3. Learned counsel for the applicant/accused submits that the applicant is innocent and has falsely been implicated in this case; that in fact the complainant Asfhaq Ahmed being an Advocate has lodged two FIRs on same set of facts being FIR No.469/2020 of PS Darakhshan was registered on 22.09.2020, whereas, the instant FIR being Crime No.44/2021 of PS Darakhshan has been registered on 14.01.2021 by showing the same description of the property; that when the first FIR was registered, the applicant after full and final payment settled the dispute with the complainant

and thereafter the case was disposed of and the applicant was acquitted of the charge; that the complainant with malafide intention and ulterior motives registered the instant FIR even after the matter was settled by using cheque already lying with him, which became dishonoured; that the complainant should have disclosed the outstanding amount, if any, remaining. He further submits that the applicant is in jail and is no more required for further investigation. Lastly he prays for grant of post-arrest bail to the applicant/accused. In support of his contentions, he has relied upon the cases reported as 2023 SCMR 748 (Bashir Ahmed vs. The State and another), 2022 SCMR 1467 (Nazir Ahmad alias Bhaga vs. The State and others), PLD 2017 Supreme Court 733 (Muhammad Tanveer vs. The State and another), 2021 SCMR 2092 (Muhammad Nasir Shafique vs. The State), PLD 1995 Supreme Court 34 (Tariq Bashir and 5 others vs. The State), 1996 SCMR 1132 (Saeed Ahmed vs. The State), 2022 SCMR 592 (Abdul Saboor vs. The State) and 2019 MLD 1692 (Shaikh Noor Muhammad vs. The State).

4. On the other hand, complainant is called absent. Though notices were issued to the complainant but he has repeatedly chosen to remain absent. However, learned APG opposes for grant of post-arrest bail.

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

6. Admittedly, prior lodging of this FIR, the complainant lodged FIR being Crime No.469/2020 at PS Darakhshan against the applicant/accused saying that he has sold a property which is situated at Badar Commercial DHA in the sum of Rs.63 lacs. However, in fulfillment of his obligation, the applicant has issued a cheque, which became bounce on its presentation, as such, the above mentioned FIR was registered. But subsequently after lodging the FIR, the compromise between the parties took place and the matter was settled and thereafter the applicant/accused was acquitted. However, the complainant misused the subsequent

cheque already lying with him and malafidely registered the instant FIR against the present applicant. As far as the contention of the learned counsel for the applicant that if any outstanding amount was remaining against the applicant, the complainant should have disclosed the detail while lodging the instant FIR, the same has force as no further detail has been mentioned in the FIR as to what reason the alleged cheque was issued by the applicant. Since the applicant/accused is in jail and is no more required for further investigation. Further, punishment for the offence in which the applicant has been booked is for upto three years, which does not come under the prohibitory clause of Section 497 Cr.P.C., grant of bail is a rule and refusal is an exception.

7. In view of the above, learned counsel for the applicant has made out a case for grant of post-arrest bail. Accordingly, the instant bail application is allowed. Applicant/accused named above is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and PR bond in the like amount to the satisfaction of the learned trial Court.

8. 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

Kamran/PA