

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 607 of 2023

Date	Order with signature of Judge
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For hearing of bail application

13.9.2023

Mr. Muhammad Moazzam Hussain advocate along with the applicant
Mr. Israr Ahmed Abro advocate for complainant along with complainant.
Mr. Zahoor Shah, Addl. P.G.

Through this bail application under Section 498 Cr.P.C., the applicant Hafiz Mudassar Javaid has sought admission to pre-arrest bail in F.I.R No.202/2023, registered for offenses under Sections 489-F/468/471/420/34 PPC at Police Station Preedy, Karachi.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant executed an agreement with the complainant and on his behalf applicant issued one cheque dated 02.12.2022, of Rs. 23, 00,000/- to be drawn through Meezan Bank, North Nazimabad Branch, Karachi had been deposited by the complainant in her account but the same was dishonored with the reason of insufficient funds. Such a report of the incident was given to Police Station Preedy, Karachi on 22.2.2023, which registered F.I.R No. 202/2023, under Section 489-F/468/471/420/34 PPC. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge II(South) Karachi vide order dated 14.03.2023 in Criminal Bail Application No. 745/2023.

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 by the complainant with malafide intention and ulterior motives. He has further argued that the alleged cheque was issued by the co-accused namely Yasir Manzoor to the complainant. He has further submitted that there is an inordinate delay of about 22 days in lodging the FIR which creates serious doubt in the prosecution story; that there are no private witnesses cited in the FIR by the complainant to say that there was any transaction between the parties; therefore the matter requires further inquiry. He lastly prayed for allowing the bail application.

4. On the other hand, learned APG assisted by learned counsel for the complainant defended the impugned bail declining order. They contended that the applicant did not deny the signatures on the cheque and he has

deprived the complainant of a huge amount, therefore, he does not deserve any leniency by this Court. Learned counsel for the complainant has submitted that the complainant has no malafide to falsely implicate him with the crime. He has further submitted that the complainant paid Rs. 25,00,000/- to the applicant as an advance payment for the subject property and on verification of the sublease from the concerned department the same was found forged as no record of sub-lease was available with them. He lastly prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and with their assistance examined the record and read section 489-F/468/471/420/34 PPC applied by the prosecution in the present case.

6. Tentative assessment of the record reveals that the alleged incident took place on 31.01.2023 and was reported to police on 22.02.2023; the complainant came into contact with the applicant about the sale and purchase of Flat No. 106-C1, situated at Babe-Iqbal Anarkali Complex Sector 11-E North Karachi; that complainant was induced to hand over Rs. 25,00,000/- to the applicant as advance payment and in result whereof the applicant handed over photocopy of the documents of the subject flat for verification and upon verification from the concerned department, they reported that the subject file is fake, as no record of such property was registered with the concerned department. The complainant approached the applicant who with the co-accused Yasir Manzoor came and handed over cheque No. A-49027489 amounting to Rs. 23,00,000/- dated 02.12.2023, which was presented in her account on 31.1.2023 however the same was dishonored as per memo of UBL Bank, Abdullah Haroon Road Branch, Saddar Karachi. The complainant has filed a statement dated 13.09.2023 supported by many FIRs registered against the applicant about the alleged fraud and cheating with the public at large.

7. A perusal of section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution: -

- (i) issuance of the cheque;
- (ii) such issuance was with dishonest intention;
- (iii) the purpose of the issuance of cheques should be:-
 - (a) to repay a loan; or
 - (b) to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).
- (iv) on presentation, the cheques are dishonored. However, a valid defence can be taken by the accused, if he proves that;-

- (i) he had made arrangements with his bank to ensure that the cheques would be honored; and
- (ii) that the bank was at fault in dishonoring the cheque.

8. The law on the aforesaid proposition is very clear that if the accused establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then he would be absolved from the punishment.

9. I am of the view that the grant of pre-arrest bail is an extraordinary relief that is extended in exceptional circumstances when glaring malafide is shown on the part of the prosecution to cause unjustified harassment and humiliation of a person in case of his arrest.

10. I am conscious of the fact that while deciding a bail application this Court has to make a tentative assessment of the record as discussed supra. Prima facie applicant is involved in cheating and deprived the complainant of her valuable money under the guise of the sale and purchase of the subject property but the applicant has failed to show the malafide of the complainant to book him in the said crime as he in connivance with the co-accused has prima facie managed to defraud a household lady.

11. The accusation against the applicant was otherwise found correct during the investigation however the innocence and guilt of the applicant are to be determined by the trial Court. This Court is well aware of dishonoring the cheque which even if becomes part of prosecution evidence and brings home the charges would entail punishment to the maximum 3 years or with a fine or with both but it is also to be taken into consideration that when there is an exception for refusal of bail even for the offense where the grant of bail is a rule, bail may be and can be refused. Moreover, the Supreme Court has repeatedly held that the mere fact that an offense does not fall within the prohibitory clause of section 497(1) Cr.PC, would not mean that such an offense had become aailable offense. The discretion remains with the competent Court to consider whether a person accused of such an offense does or does not deserve the grant of bail under the established norms governing the exercise of such a power. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of *Afzaal Ahmed vs. The State* (2003 SCMR 573), *Muhammad Afzal vs. The State* (1997 SCMR 278) & *Imtiaz Ahmed vs. The State* (PLD 1997 SC 545).

12. In the present case, no malafide or ulterior motive has been attributed on the part of the complainant to falsely implicate the applicant in the case as he in connivance with co-accused defrauded the applicant of his valuable amount as such the case of the applicant prima facie attracts Section 489-F, 420, 468, 471/34 PPC for the reason that firstly the alleged cheque was dishonored and thereafter upon verification of the documents and its forensic report dated 18.08.2023 issued by the office of the Assistant Inspector General of Police Forensic Division Sindh Karachi, which prima facie connects the applicant with the alleged crime, however, all the aspects of the case shall be looked into by the trial Court. It is also alleged that the applicant is involved in a series of similar cases in Karachi; such copies of different F.I.Rs have been placed on record, which prima facie show that the applicant is prone to repeating the offenses. On the aforesaid proposition I am guided by the decisions of the Supreme Court in the cases of Malik Muhammad Tahir vs. The State **2022 SCMR 2040**, Saima Ashiq Jawed vs. The State **2020 SCMR 1160**, Waqas ur Rehman alias Moon vs. The State **2021 SCMR 1899**, Shameel Ahmed vs The State, **2009 SCMR 174** and Shaukat Ali alias Shoka vs The State **2004 SCMR 1068**.

13. In view of the above, this bail application is dismissed, however, the applicant is facilitated for an early outcome of the trial of this case by filing challan before the competent Court where the trial be held expeditiously.

14. All the observations made hereinabove are tentative and shall have no bearing on the final determination of guilt or innocence by the trial Court.

JUDGE