

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1578 of 2023

Applicant : M. Abid Nathani S/o Muhammad Haneef
Through Mr. Abdul Nadeem Shar,
Advocate

Complainant : Nayyar Kamra S/o Naseeruddin
Present in person.

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

Date of hearing : 09.08.2023

Date of order : 09.08.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.159/2023 registered under Section 489-F PPC at PS Khawaja Ajmir Nagri, after his bail plea has been declined by Vth Additional Sessions Judge, Karachi Central vide order 29.05.2023.

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. Per learned counsel, the applicant is innocent and has falsely been implicated in this case; that in fact the applicant has given a cheque to the complainant as a guarantor and thereafter he has paid the entire amount to the complainant; that after receiving the amount, the complainant malafidely misused the said cheque which became dishonoured. He further submits that the applicant is attending the Court and is no more required for further investigation. He lastly prays for confirmation of pre-arrest bail to the applicant.

4. On the other hand, complainant and learned Addl. P.G. have vehemently opposed for confirmation of bail.

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

6. The case of the prosecution is that the complainant invested an amount of Rs.5 lacs with the applicant for a business of sell and purchase of diesel. However, when the applicant refused to pay the profit amount to the complainant then he demanded him to return his invested amount, as such, the applicant has given a cheque bearing Cheque No.00000044 of Rs.5 lacs, which became dishonoured on the ground that 'insufficient amount in his account', as such, the complainant registered an FIR bearing No.504/2022 U/s 489-F PPC at PS Khawaja Ajmir Nagri and subsequently, after the registration of the said FIR, the applicant/accused was arrested but due to intervention of Naikmard, the complainant had given no objection on the promise that the applicant would pay him the remaining amount. However, after that the applicant with intention of cheating and fraud again issued him cheque, which too became dishonoured, as such, ingredients of Section 489-F are very much applicable in this case. Further, the applicant knew that he had no sufficient amount in his account but issued cheque to the complainant which shows that he has cheated with the complainant. At bail stage, only tentative assessment is to be made. The ocular evidence finds support from the evidence of other witnesses recorded U/s 161 Cr.P.C. 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 19.07.2023 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

Kamran/PA