

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Bail Application No. S-435 of 2024

Applicant : Abdul Razzak s/o Ghulam Nabi, through
Mr. Abdul Rasheed Abro, Advocate

Respondent : The State, through Mr. Siraj Ahmed Bijarani,
APG,

Complainant : Adbul Rehman @ Badasha s/o Datar Dino,
through Mr. Muhammad Aamir Qureshi,
Advocate

Date of hearing : **21.06.2024**

Date of order : **21.06.2024**

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Cr. Bail Application, applicant/accused Abdul Razzak s/o Ghulam Nabi seeks pre-arrest bail in Crime No. 259 of 2022 registered under section 489-F, P.P.C. at P.S. Kotri, Distt. Jamshoro. His earlier application for the same relief bearing No. 237/2024 was dismissed by the Addl. Sessions Judge-I, Kotri, vide order dated 19.04.2024. He was admitted to interim pre-arrest bail by this Court vide order, dated 02.05.2024, now the matter is fixed for confirmation of the same or otherwise.

2. It is alleged that, on 19.03.2022, the applicant purchased a piece of land, admeasuring 04-07 acres, located in Survey No.3, Deh Sonwalhar, from the complainant through a Sale Agreement reduced in writing on a non-judicial stamp paper for total sale consideration of Rs. 3,34,00,000/-. As per the terms of contract, he issued a cheque of JAZZ Bank, Khairpur to the complainant amounting to Rs. 1,00,00,000/- being token money, which on 05.04.2022 was dishonored by the bank on being presented.

3. Learned counsel for the applicant contends that the applicant is innocent and he has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives; that the applicant issued the subject cheque

as surety; that the applicant paid the balance amount i.e. Rs. 2,34,00,000/- to the complainant through a cheque of ZTBL dated 05.08.2022; that the complainant handed over the possession of the subject land to applicant; that since the complainant failed to perform his part of contract, the applicant on 07.09.2022 filed a civil suit being No. 151/2022 for specific performance of contract and permanent injunction, which is pending adjudication before the Court of Senior Civil Judge, Jamshoro; that it is a fit case for further enquiry, thus the present applicant is entitled for the concession of bail.

4. On the other hand, learned counsel for the complainant as well as learned APG oppose the grant of pre-arrest bail to applicant on the ground that he has committed cheating with the complainant by taking the possession of the subject land against the subject cheque of token money, which on presentation was dishonored; that the alleged offence is non-bailable; that sufficient evidence is available with the prosecution to connect the applicant with the alleged offence; hence, he is not entitled to the concession of bail; that the applicant is not entitled to the extra-ordinary concession of pre-arrest bail.

5. Heard the learned counsel for the parties and perused the material available on record with their assistance.

6. The applicant claims that he had issued the alleged cheque to the complainant as "surety". His claim is not supported by the alleged sale agreement, wherein it has been clearly mentioned that the alleged cheque of Rs. 1,00,00,000/- has been delivered to complainant as "token money". Hence, the alleged contention of the applicant is *prima facie* incorrect. It is also an admitted possession (*para 4 of the sale agreement; para 4 of the bail application and para 5 of the civil suit may be referred to*) that the on delivery of the alleged cheque of token money, the complainant handed over the possession of the subject land to applicant. The alleged cheque has apparently been issued by the applicant in

fulfillment of his obligation against purchasing of the piece of land, which carries a criminal liability. The cheque was dishonored on being presented for encashment, which shows that the same was issued by the applicant with dishonest intention; hence, ingredients of section 489-F, P.P.C. are fully attracted. Applicant has failed to show any mala fide on the part of complainant. Filing of a civil suit cannot be a ground for the grant of bail.

7. The counsel for the applicant has not been able to point out any special feature of the case entitling the applicant to the grant of extra-ordinary concession of pre-arrest bail. Pre-requisites for such concession i.e. malice and ulterior motive, either on the part of complainant or the police are conspicuously missing in the case. Accordingly, the application in hand is dismissed. The interim bail granted to applicant, vide order dated 02.05.2024, stands recalled.

JUDGE