

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-176 of 2024

(Shaikh Muhammad Bilal Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 15.08.2024

Mr. Zulifiqar Ali Laghari, Advocate for the applicant
Mr. Afzal Karim Virk, Advocate for the complainant
Mr. Dhani Bux Mari, Assistant P.G Sindh

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ORDER

Adnan-ul-Karim Memon, J. Through this post-arrest bail application, the applicant Shaikh Muhammad Bilal is seeking post-arrest bail in FIR No 84 of 2024 under section 489-F PPC, registered at Police Station Jhudo. His earlier bail application was declined by the trial court vide order dated 24.07.2024 on the premise that the issuance of the cheque is not denied by the applicant/ accused and its dishonoring by the bank is also an undisputed fact. So far as the defense plea that the cheque in question was obtained by the complainant as guarantee/ security when he employed the applicant/ accused in Quice Food Industries, in Karachi, however, no proof is available with the defense showing a connection of complainant with the employment of applicant/ accused in Quice food industries Karachi, if any.

2 The accusation against the applicant is that due to a business transaction of poultry, the applicant issued the cheque of Rs.60,00000/- to the complaint on 19.1.2024, and the same was presented in the bank but was dishonored on 1.2.2024 Such report was lodged with Police on 28.6.2024.

3. Learned counsel for the applicant argued that the FIR is belated about 5 months and 9 days without any plausible explanation. He further argued that no amount is due against the applicant/ accused. He further argued that the cheque in question was not issued to the complainant but the complainant misused the said cheque. He further argued that it is very surprising to note that the complainant handed over 15,000-kilogram chicken worth Rs.60,00,000/- to the applicant/ accused then and there without any agreement in writing and the same was shifted in one Mazda vehicle. He further argued that to applicant/ accused was an employee at Quice Food Industries owned by the brother of the present complainant where his employer had obtained the cheque in question as guaranty/ security which was misused by the present complainant and therefore matter requires further enquiry. He further argued that the offense under section 489-F P.P.C does not fall within the ambit of the prohibitory clause of section 497 Cr.P.C. Learned counsel for the applicant/accused argued that the alleged offense is punishable up to three years, therefore, no fruitful result would come out by keeping the

applicant/accused behind the bars for indefinite period. He prayed for allowing the bail application.

4. Learned Assistant Prosecutor General duly assisted by the learned counsel for the complainant opposed the grant of bail to the applicant/accused on the ground that prima facie cognizable offense is made out against the applicant and the material available on record is sufficient to connect the applicant/accused with the commission of the offense under section 489-F PPC. He further argued that the applicant/accused has not made out the case for further inquiry and his application may kindly be dismissed.

5. I have heard the learned counsel for the parties and perused the record with their assistance. Section 489-F, P.P.C. was originally inserted in Pakistan Penal Code, 1860 by Ordinance LXXII of 1995, providing conviction for counterfeiting or using documents resembling National Prize Bonds or unauthorized sale thereof and while the same was part of the statute, again under Ordinance LXXXV of 2002, another Section under the same number viz. 489-F of P.P.C. was inserted on 25.10.2002 providing conviction and sentence for the persons guilty of dishonestly issuing a cheque towards repayment of loan or fulfillment of an obligation, which is dishonored on its presentation. In that newly inserted Section 489-F of P.P.C., the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend up to 3 years or with a fine or both. The cheque amount involved in the offense under such a section is never considered stolen property. Had this been treated as stolen property, the Investigating Agency would certainly have been equipped with the power to recover the amount also as is provided in Chapter XVII of P.P.C. relating to offenses against property. The offense under Section 489-F, P.P.C. is not made part of the said Chapter providing the offenses and punishments of offenses against property, rather in fact the same has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks. Primarily, in bail matters, it is the discretion of every Court to grant the bail, but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under Section 489-F, P.P.C. Every transaction where a cheque is dishonored may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly that the cheque in question is dishonored.

6. I have noted that the cheque in question was issued on 19.1.2024 and such a report was lodged with Police on 28.6.2024. If that is so, I am unable to understand why the complainant kept quiet for such a long period and did not lodge the FIR on time. This prima facie supports the stance taken by the applicant. Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount.

7. In view of the above, the question of whether the cheque was issued towards repayment of the loan or fulfillment of an obligation within the meaning of Section 489-F

PPC is a question, that would be resolved by the learned Trial Court after the recording of evidence.

8. 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. The Supreme Court in several cases has held that the liberty of a person is a precious right that cannot be taken away without exceptional foundations. It has already been clarified by the Supreme Court in the cases of Shahid Imran v. The State and others (2011 SCMR 1614) and Rafiq Haji Usman v. Chairman, NAB and another (2015 SCMR 1575) that the offenses are attracted only in a case of entrustment of property and not in a case of investment or payment of money. Once the Supreme Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by the Supreme Court under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 has binding effect on all subordinate Courts. On the aforesaid proposition, I seek guidance from the decisions rendered by the Supreme Court in the cases of The State v. Syed Qaim Ali Shah (1992 SCMR 2192) and Khan Asfandiyar Wali and others v. Federation of Pakistan (PLD 2001 SC 607).

9. The applicant has been behind bars since his arrest and is no longer required for further investigation and concession of bail could not be withheld by way of premature punishment. Reliance is placed upon the case of Husnain Mustafa v. The State and another (2019 SCMR 1914). I expect that the Courts below adhere to these binding principles in the future and not act mechanically in the matter of granting or refusal of bail because the liberty of a citizen is involved in such matters; therefore, the same should not be decided in a vacuum and without proper judicial approach.

10. Prima facie all the material is in documentary shape; the investigation is complete and the applicant is no longer required for further investigation. Consequently, bail is granted to the applicant/accused subject to furnishing solvent surety in the sum of Rs. 500,000/- (Rupees Five Lacs only) with one more surety of the same amount and P.R bond in the like amount, for the satisfaction of trial Court

11. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to conclude the trial positively within one month if the charge is not framed the same shall be framed on the date so fixed by the trial court. In case of failure on the part of the trial Court, the report shall be made to the MIT for refereeing the matter to the competent authority for appropriate order on the administrative side.

JUDGE