

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-170 of 2024

Applicant : Ali Hassan, through
Mr. Mubarak Ali Ghoto, Advocate

Complainant : Abdul Samad, through
Mr. Javed Hussain Manik, Advocate

Respondent : The State through
Mr. Imran Mobeen Khan, Assistant
Prosecutor General

Date of hearing : 10-05-2024

Date of Decision : 10-05-2024

O R D E R

Arbab Ali Hakro, J: Through this bail application under Section 498 Cr.P.C, applicant Ali Hassan, son of Ali Sher, seeks pre-arrest bail in Crime No.26/2024, registered under sections 489-F, 506/2 P.P.C. at Police Station Ghotki. The applicant had previously filed Crl. Bail Application No.421 of 2024, before Additional Sessions Judge-III, Ghotki, but the same was dismissed vide order dated 09.03.2024; hence, the applicant approached this Court.

2. Briefly stated, the allegation against the applicant is that he has purchased a GLI Toyota Corolla car bearing No.AZI-813 from complainant Abdul Samad vide stamp paper No.3235 dated 30-12-2022 and in this regard, issued a cheque No.290303315 amounting to Rs.22,00,000/- (Rupees Twenty Two Lac) of his account existing in National Bank of Pakistan, Ghotki Branch to the complainant however, when the said cheque was presented for its encashment by the complainant in his account, the same was bounced/dishonoured.

3. At the very outset, it has been argued by the learned counsel for the applicant that the applicant is innocent and has been falsely roped in this case against the actual facts and circumstances. He further argued that there is no business relationship existing between the applicant and complainant Abdul Samad; in fact, the applicant had received a loan amounting to Rs.350,000/- from one Muhammad Yaqoob in the year 2021 and entered into an agreement dated 06-07-2021 and at that time, the applicant handed over one blank cheque No.290303315 as "Guarantee" to Muhammad Yaqoob. He submitted that thereafter, the applicant had returned the loan amount of Rs.350,000/- to said Muhammad Yaqoob, but the latter was demanding an interest amount. On failure of applicant, Muhammad Yaqoob who is a relative of the present complainant, Abdul Samad, handed over the cheque of the applicant to Abdul Samad. Then Abdul Samad, with malafide intention misused the same and managed a false stamp paper by concocting a false story regarding sale/purchase of car; as such, the case of the applicant requires further enquiry. He further contended that the basic ingredients of Section 489-F are missing; therefore, applicant cannot be saddled with criminal liability; the applicant has filed Suit for Declaration, Cancellation of cheques and agreement as well as Permanent injunction against the complainant and Muhammad Yaqoob and to pressurize the applicant, the complainant lodged instant FIR. He argued that the offence with which the applicant stands charged does not fall within the ambit of the prohibitory clause of section 497 Cr.P.C, and the dispute between the parties is of a civil nature. Therefore, he prays for confirmation of interim bail.

4. Learned A.P.G assisted by learned counsel for the complainant, opposed the grant of bail to the applicant/accused on the ground that applicant/accused not only committed fraud with the complainant and deprived him of the heavy amount of Rs.22,00,000/- (Rupees twenty-two Lac) so also issued a cheque knowingly that the same would not

be honoured by the Bank. Per learned A.P.G, in the facts and circumstances of the case, the applicant/accused is not entitled to grant of pre-arrest bail merely for the reason that the offence does not fall under the prohibitory clause under section 497 Cr. P.C.

5. I have heard learned counsel for the applicant, learned A.P.G. for the State, and learned counsel for the complainant and perused the material available on record.

6. As per the contents of the crime report, the applicant purchased a GII Toyota Corolla car bearing No.AZI-813 from complainant vide stamp paper No.3235 dated 30-12-2022 and in this regard, issued a cheque No.290303315 amounting to Rs.22,00,000/- (Rupees Twenty Two Lac) of his account existing in National Bank of Pakistan, Ghotki Branch to the complainant and when the said cheque was presented for its encashment by the complainant in his account, the same was bounced/dishonoured. However, it is the applicant's stance that there was no business transaction between him and the complainant, and neither did he issue a cheque to the complainant nor enter into any agreement regarding the sale/purchase of a car. According to learned defence counsel, in the year 2021, the applicant had received a loan amounting to Rs.350,000/- from one Muhammad Yaqoob and entered into an agreement dated 06-07-2021 and at that time, the applicant handed over one blank cheque No.290303315 (the subject cheque in this case) as "Guarantee" to Muhammad Yaqoob who is relative of complainant of this case. To substantiate it, he has placed on record a copy of the agreement dated 06-07-2021 executed between the applicant and one Muhammad Yaqoob. A bare perusal of the same shows that the subject cheque was given as a form of "Guarantee" to Muhammad Yaqoob. Interestingly, the cheque was given in a blank state, devoid of any specific monetary amount, and this fact is categorically mentioned in the agreement dated 06-07-2021. It is also a matter of record that before registration of this FIR, the applicant filed a suit for declaration, cancellation of cheques and agreement, and permanent

injunction against the complainant and Muhammad Yaqoob. This prima facie supports the stance taken by the applicant. Hence, whether the applicant had issued the subject cheque to the complainant towards repayment of the loan or fulfillment of an obligation within the meaning of Section 489-F PPC is a question that the trial Court would resolve after recording evidence.

7. It is also noted that the alleged incident took place on 11.10.2023, whereas the FIR was lodged on 24.01.2024 after a delay of more than 03(three) months, which has not been plausibly explained by the complainant; therefore, the possibility of false implication of the applicant in this case, cannot be ruled out.

8. Furthermore, the case has been challaned; therefore, sending the applicant to jail would not serve the purpose. Besides, the offence for which the applicant is charged does not fall within the prohibitory clause of Section 497 Cr.P.C where grant of bail is a rule and refusal is an exception. No exceptional circumstance appears to withhold the bail to applicant in this case. In this regard, reliance is placed on the judgment of the Supreme Court of Pakistan rendered in the case "Nazir Ahmed alias Bhaga VS The State & another" reported as 2022 SCMR 1467, where it was held that the maximum punishment provided under the statute for the offence 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 granting bail in offences not falling within the prohibitory clause is a rule, and refusal is an exception. In the said context, reference can also be made to the case of Muhammad Nasir VS. The State reported as 2021 SCMR 2092.

9. Needless to mention here that the prima facie mere issuance of a cheque which is subsequently dishonoured does not constitute an offence under section 489-F P.P.C unless it is proved that the same was issued with the dishonest intention for repayment of a loan or discharging of any obligation; all ingredients are required to be proved during the trial, till then case of applicant call for further enquiry.

10. In view of the above, I have concluded that the case of applicant falls within the scope of subsection (2) of Section 497 Cr.P.C. As such, the interim pre-arrest bail already granted to the applicant vide order dated 25.3.2024 is hereby confirmed; however, it is subject to furnishing an additional surety of Rs.150,000 along with a P.R Bond in the like amount.

11. It is important to note that the observations made hereinabove are tentative in nature only to decide this bail application, which shall not in any manner influence the trial court at the time of the final decision of the subject case. However, the learned trial court is directed to proceed with and conclude the trial expeditiously.

JUDGE

Suleman Khan/PA