

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**CrI. Bail Application No. 2934 of 2023**  
*[Arshad Ali s/o Moj Khan Vs. The State]*

Date	Order with signature of Judge
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**FOR HEARING**

Date of Hg: 05.03.2024

Syed Nadeem ul Haq, advocate for applicant / accused.  
Mr. Muhammad Ilyas Khan Tanoli, advocate for complainant.  
Ms. Seema Zaidi, Additional Prosecutor General Sindh.

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**ARSHAD HUSSAIN KHAN, J:** Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.462/2023 registered under Sections 489-F PPC at P.S. Mehmoodabad, Karachi, after his bail plea has been declined by two courts below, vide orders dated 22.12.2023 and 18.12.2023.

The facts of the case are elaborately mentioned in the bail application and FIR hence, the same need not be reproduced.

2. Learned counsel has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that there is an inordinate delay in registration of FIR, which is not plausibly explained by the complainant; that the FIR is silent about what amount of commission was paid by the applicant / accused to the complainant, which makes the case of further inquiry. He further submits that subject cheques were security cheques and when the applicant / accused paid all the amount and profit to the complainant asked for return of his cheques but he refused to return the said cheques. He also submits that the question of issuance of cheques will be determined at the time of trial after leading evidence. He further submits that the offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. and according to the superior courts bail in such like cases is a rule as no exceptional ground of refusal of bail is established by the complainant. He lastly prays for release of the applicant / accused on bail and in support of his contentions, he has relied upon the cases of *Sheikh Rehan Ahmed v. Judicial Magistrate-II, Sought Karachi and 2 others* [2019 MLD 636] and *Hamid Khan v. The State and 2 others* [2022 MLD 31].

3. On the other hand, learned counsel for the complainant as well as learned Additional Prosecutor General have vehemently opposed grant of bail to the applicant/accused on the ground that the applicant / accused under the garb of business defrauded the complainant and dishonestly issued subject cheques. Learned counsel for the complainant has relied upon the case of *Muhammad Ramzan v. the State and others* [2014 SCMR 749], *Ghazanfar Ali and others v. the State and others* [2017 P.Cr.L.J. 649], *Seema Fareed and others v. the State and another* [2008 SCMR 839], *Syed Zahoor-ul-Hassan Shah v. the State* [2021 P.Cr.L.J. 886], *Muhammad Imran v. the State and others* [PLD 2021 Supreme Court 903] and *Farman Hussain v. the State* [2023 P.Cr.L.J. 398].

4. I have heard the learned counsel for the parties and have gone through the material available on the record.

A perusal of the FIR shows that the complainant had invested some amount in the milk business of the applicant / accused on the commission basis and he used to give commission to the complainant till the month of October 2018, thereafter, the applicant stopped giving commission, however, on the persistent demand of the complainant the applicant issued subject cheques, which were bounced. Such fact has been admitted by the applicant in paras-5, 6 and 7 of his bail application. There appears the subject cheques were issued by the applicant / accused to the complainant in respect of some business obligations, however, when the cheques were presented in the bank the same were dishonoured with three reasons viz. 'Insufficient Fund', 'Amount in Words and Figures Differ' and 'account dormant', which reflects that the applicant / accused issued said cheques with malafide intention to defraud the complainant of his amount by issuing allegedly bogus cheques of his account, [with different amount in words and figures] which was not operational [dormant account]. It may be observed that issuance of the above said cheques without arranging payment by the bankers itself shows dishonesty of the applicant/accused, which attracts the offence of Section 489-F.

5. Insofar as the contentions that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C. and that the grant of bail is a rule and refusal is an exception are concerned, there is no cavil to the proposition that the alleged offence does not fall within prohibitory

clause of Section 497 Cr.P.C. however, the applicant/accused has committed fraud with the complainant by issuing the said cheques, which were bounced due to difference of amount in the words and figures as well as “dormant account”. Admittedly, an offence under section 489-F PPC entails maximum punishment up to three years R.I and ordinarily in such like cases grant of bail is a rule and refusal is an exception. However, the apex Court has repeatedly held that the mere fact that an offence does not fall within the prohibitory clause of section 497(1), Cr.P.C., would not mean that such an offence has become aailable offence. The discretion still remains with the competent court to consider whether a person who is accused of such an offence does or does not deserve the grant of bail in accordance with the established norms governing the exercise of such a power.<sup>1</sup> Furthermore, the legislature had intentionally kept this offence as non-bailable and it has consistently been held by this Court as well as by the Supreme Court of Pakistan that in non-bailable offences grant of bail is not the right of an accused and it is a concession. Reference may be made to the case of *Shameel Ahmed Vs. The State* [2009 SCMR 174] wherein the Hon’ble Supreme Court of Pakistan has held that:

“4.....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles--- Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application---Each case has to be seen through its own facts and circumstances-- -Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse.”

6. In another case of *Muhammad Siddique Vs. Imtiaz Begum and two others* [2002 SCMR 442] wherein the Supreme Court of Pakistan held that:-

“4.....None can claim bail as of right in non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

7. Insofar as the case laws relied upon by the learned counsel for applicant are concerned, these are distinguishable from the facts and circumstances of this case, as such, the same are not applicable. Furthermore, the case of Sheikh Rehan Ahmed (*supra*) mainly relied upon by the learned counsel for applicant has been set-aside in *CrI*.

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<sup>1</sup> Afzaal Ahmed v. The State [2003 SCMR 573], Muhammad Afzal v. The State [1997 SCMR 278] and Imtiaz Ahmed v. The State [PLD 1997 SC 545].

Appeal Nos.8-K and 9-K of 2022 by the Supreme Court of Pakistan vide judgment dated 22.12.2022.

8. In the circumstances, in my view, learned counsel has failed to make out a case for grant of post-arrest bail to the applicant/accused. Consequently, instant bail application is dismissed, however, the trial court is directed to conclude the trial preferably within a period of three (03) months from the date of receipt of this order.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on merits of the case.

Bail Application stands disposed of.

JUDGE

Karachi;  
Dated: 14.03.2024