IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S-158 of 2024

Date of hearing	Order with signature of Judge

1. *For orders on office objection at flag 'A'*
2. *For hearing of bail application*

O R D E R
29.03.2024

Mr. Sikandar Ali Junejo, Advocate for applicant/accused
Mr. Shafi Muhammad Mahar, DPG

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ZULFIQAR ALI SANGI J., Through instant bail application the applicant/accused ***Muhammad Khair son of Wahid Bux by caste Brohi***, seeks pre arrest bail in Crime No. ***41/2024*** U/S 489-F, 420 PPC registered at police station 'C' Section Sukkur. Prior to this, the applicant/accused has filed bail application for grant of pre-arrest bail, but the same was turned down by the Court of learned Additional Sessions Judge-III/MCTC-II Sukkur vide order dated ***12.03.2024,*** hence he filed instant bail application.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. It is contended by the learned counsel that applicant/accused has falsely been implicated in this case by the complainant with mala fide intentions and ulterior motives due to personal grudge; that offence does not fall within the prohabitory clause of section 497 Cr.P.C; that case has been challaned and applicant/accused is not more required for further investigation; that after grant of interim pre-arrest, the applicant/accused joined the investigation as well as learned trial Court and has not misused the concession of interim pre-arrest bail, therefore, he prayed for confirmation of interim pre-arrest bail.

4. On the other hand learned DPG for the State has opposed for confirmation of bail on the ground that applicant/accused is nominated in FIR with specific role that he issued cheque with mala fide intention and on its presentation, same was dishonoured by bank concerned. It is further submitted that issuance of cheque has not been denied by the applicant/accused. Lastly, he prayed for dismissal of bail plea of applicant/accused.

5. I have heard learned counsel for applicant/accused, learned DPG for the State and have gone through the material available on record.

6. The dispute between the parties is admitted in the FIR and it is alleged by the accused that the possession of the plots was not handed over to him and the complainant himself is not the owner of property in question. Be that as it may, the offence with which the applicant/accused involved is punishable up to 3 years and same does not fall within the ambit of prohabitory clause of Section 497 Cr.PC and grant of bail in these cases is right, while refusal is an exception as has been held the by the Supreme Court of Pakistan in the cases of **Tarique Bashir vs. State (PLD 1995 SC 34), Zafar Iqbal vs. Muhammad Anwar and others (2009 SCMR 1488) and Muhammad Tanveer vs. The State (PLD 2017 SC 733) and Shaik Abdul Rehman v. The State etc (2021 SCMR 822)**

7. Further, the Supreme Court of Pakistan in case of **Muhammad Imran vs. The state and others (PLD 2021 SC 903)** has formulated the grounds for the case to fall within the exception meriting denial of bail as (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view of his previous criminal record of the desperate manner in which he has prime facie acted in the commission of offence alleged. The Supreme Court held in the said order that the prosecution has to show if the case of the applicant/accused falls within any of these exception on the basis of material available on record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicant. It is also settled by the Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on record.

8. In view of above discussion, applicant/accused has made out a good case for confirmation of bail in the light of sub section (2) of Section 497 CrPC, hence the instant bail application stands allowed and result thereof, interim pre arrest bail already granted to the applicant/accused vide order dated ***18.03.2024*** is confirmed on same terms and condition. However, learned trial Court is at liberty to take action against the applicant/accused, if he misuses the concession of bail.

9. Needless to mention 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.

J U D G E

M.Ali steno*