

# IN THE HIGH COURT OF SINDH, KARACHI

## **Criminal Bail Application No. 1453 of 2024**

<i>Date</i>	<i>Order with signature of Judge</i>
<b>Applicants</b> (i) Ahmer Ullah Khan son of Saddiq Ullah Khan  (ii) Owais Ullah Khan son of Siddiq Ullah Khan	: through M/s. Qazi Ahmed Kamal & Aneel Tariq, Advocates a/w Applicants (on bail)
<b>The State</b>	: Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh.
<b>Complainant</b> Ishtiaq Ahmed Qureshi	: Through Mr. Nishan Ali Haider, Advocate.
<b>Date of hearing</b>	: 16.08.2024
<b>Date of order</b>	: 16.08.2024

### **ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicants Ahmer Ullah Khan and Owais Ullah Khan seek their admission to pre-arrest bail in Crime No. 243/2024 of Police Station New Karachi, under Section 489-F PPC. The applicants preferred their anticipatory bail before the Court of Sessions, which was assigned to IInd Addl. Sessions Judge, Karachi (Central), who after hearing the parties, has turned down their request through order dated 28.06.2024. The case has been challaned which is now pending for trial before the Court of Civil Judge & Judicial Magistrate-V, Karachi (Central). Hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicants submitted that there are no dues standing against the applicants and complainant is exerting illegal pressure

upon the applicants so that they may meet with his unjustified demands; however, he could not deny issuance of cheque in favour of the complainant issued by the applicant. Learned counsel further submitted that the offence with which applicants have been charged, does not exceed limits of prohibitory clause of section 497 Cr.P.C; beside, case has been challaned; hence, case against applicants requires further inquiry. He, therefore, insists that by granting instant application, ad-interim pre-arrest bail granted to applicants on 01.07.2024 may be confirmed.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposed the application on the ground that applicants sold out the car to son of complainant and subsequently it was returned to them against the amount paid by the complainant. Applicants had issued a cheque to complainant for said amount which on presentation before the Bank concerned, was found dishonoured; hence, the applicants have committed the crime in terms of Section 489-F PPC. Learned Addl. P.G, Sindh also drawn attention of the Court towards agreements executed by the applicants and submitted that since there is sufficient evidence in shape of documents and the applicants being guilty of said charges, cannot claim bail merely on the ground that it involves with a short punishment. In support of his contention, learned Addl. P.G places his reliance upon an unreported order dated 12.08.2024 passed by this Court vide Criminal Bail application No.1761 of 2024 (re-Dr. Faisal Ahmed Versus The State and another).

5. Learned counsel for the complainant while adopting arguments advanced by learned Addl. P.G Sindh, also opposed the bail application and submitted that case has been challaned where the accused are avoiding to proceed with the trial; hence, by dismissing their bail application, they may be taken into custody so that trial Court may be in a better position to proceed with the trial and conclude it within no time.

6. **Heard arguments, record perused.** Admittedly, there is no denial of the cheque issued by the applicants and agreements duly executed between them with the complainant. Per documents collected by the I.O during investigation, the son of complainant had purchased a Toyota Passo Car from the accused on 18.09.2023; however, original file of said vehicle was

not handed over to complainant by the accused. Per prosecution case, complainant had returned the car to accused and in exchange thereof a disputed cheque was issued by them in respect of car amount which later was not realized by the Bank concerned. Such malice on the part of accused is betray practice which deprived the complainant of his valuable amount as well as the asset. It is well settled principle of law that one cannot claim bail in non-bailable offence and mere short sentence is no ground to enlarge the accused on bail more particularly when the prosecution has collected sufficient documentary evidence during investigation, which is yet to be trashed out by the trial Court after recording evidence of the parties.

7. I have gone through the material made available before me on record and observe that the applicants notwithstanding the punishment of imprisonment, not falling under the prohibitory clause, cannot be admitted to pre-arrest bail as a matter of right overlooking the attending facts and circumstances of the case. For seeking bail in a non-bailable offense, it is incumbent that the accused shall establish prima facie, the fact that their case is open to further inquiry and/or case is based on malafide intention, both factums are missing in present case. From tentative assessment of the evidence on record, the prosecution case against the applicants brims with incriminating connecting evidence about issuance of the cheque involved in the criminal case, and no case of malafide on the part of the prosecution has been made out; hence, the applicants are not entitled to the extraordinary relief.

8. In case of Shameel Ahmad v. The State (2009 SCMR 174), Hon'ble Supreme Court of Pakistan while dealing with same situation, has laid down esteemed dictum in para-4 of the order, which reads as under;\_

*"4. We have heard the learned counsel for the parties and have perused the record. With regard to the contention that the bail should always be granted in cases not falling within the domain of prohibition clause of proviso to section 497, Cr.P.C. it is observed that it is not a rule of universal application. Each case has to be seen through its own facts and circumstances. The grant of bail, no doubt, is discretion granted to a Court, yet the exercise of it cannot be arbitrary, fanciful or perverse. If an order granting the bail has been obtained after suppressing necessary details of vital importance, the bail can be cancelled by the Court which had granted it. Petitioner who was involved in three previous cases of similar kind was prima facie found to be a habitual offender of issuing cheques and defrauding the people. ...."*

9. No malice on the part of complainant has been shown to believe that applicants have been implicated in this case falsely. In absence of such basic ingredients for seeking pre-arrest bail, no extraordinary relief in shape of pre-arrest bail can be granted. Since, basic ingredients for grant of pre-arrest bail, as has been laid down by the Hon'ble Supreme Court of Pakistan in case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*, are lacking in this case, hence, application in hand merits no consideration. Consequently, same was dismissed by a short order dated 16.08.2024 and the applicants were taken into custody. These are the reasons of said short order.

10. It will be appropriate to reproduce the short order dated 16.08.2024, which reads as under;\_

**"16.08.2024**

*M/s. Qazi Ahmed Kamal & Aneel Tariq, Advocates along with Applicants (on bail).*

*Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh.*

*Mr. Nishan Ali Haider, Advocate along with Complainant.*

**-x-x-x-x-**

***Heard arguments of the parties.*** For the detailed reasons to be recorded later on, instant Criminal Bail Application arisen out of Crime No.243 of 2024 registered with P.S New Karachi, under Section 489-F PPC, is hereby dismissed. Since, the case has been challaned which is now pending for trial before the Court of Civil Judge & Judicial Magistrate-V, Karachi (Central), therefore, applicants ***Ahmer Ullah son of Siddiq Ullah Khan and Owais Ullah Khan son of Siddiq Ullah Khan*** are taken into custody and remanded to Central Prison, Karachi, with directions to Senior Superintendent, Central Prison, Karachi, to produce them before the trial Court as and when summoned by it.

*A copy of this order shall be communicated to trial Court by sending a copy of this order to learned Sessions Judge, Karachi (Central), over fax today, for compliance. Learned MIT-II to ensure compliance."*

11. A copy of this order shall be sent by fax to trial Court, for compliance, with directions to conclude the trial within three (3) months' time, under intimation to this Court. A copy of this order shall also be sent by fax to learned Sessions Judge, Karachi (Central), for compliance.

**JUDGE**

**Approved for Reporting**

Zulfiqar/P.A