

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Misc. Appln. No.S-206 of 2014.

Applicant : Waheed Ali Kalhoro,
through Mr. Imtiaz Ali Mugheri, Advocate.

Respondent No.1 : Abdul Sattar Kalhoro,
through Mr. Mazhar Ali Bhutto, Advocate.

Respondent No.2 : The State, through Mr. Khadim Hussain
Khooharo, DPG.

Date of hearing : 08.08.2016.
Date of order : 08.08.2016.

ORDER.

ZAFAR AHMED RAJPUT, J.- By means of this criminal miscellaneous application, the applicant/complainant seeks cancellation of pre-arrest bail granted to the respondent No.1/accused by the learned Sessions Judge, Larkana vide order dated 07.8.2014, passed in Crl. Bail Application No.925/2014, arising out of Crime No.82/2014, registered at Police Station Bakapur, under Sections 406, 420, 489-F, PPC.

2. Mr. Imtiaz Ali Mugheri, learned Counsel for the applicant/complainant, has contended that the respondent No.1/accused issued a cheque on 24.4.2014, bearing No.9626870, drawn on Silk Bank Larkana amounting to Rs.50,00,000/- towards fulfillment of an obligation, which was dishonoured on presentation, therefore, the applicant/complainant lodged aforementioned F.I.R against respondent No.1/accused, who during investigation filed pre-arrest bail application No.925/2014 before the learned Sessions Judge, Larkana and obtained interim pre-arrest bail, which was subsequently confirmed vide impugned order. The learned Counsel has further contended that the impugned order suffers from material illegality as the same has been

passed against the norms of criminal justice. He has also added that the principles for grant of pre-arrest bail are different from principles governing the grant of post arrest bail and in this case the respondent No.1/accused has been granted pre-arrest bail on the principles of post-arrest bail, therefore, the impugned order is arbitrary, capricious and without legal merits, hence the same is liable to be set aside. In support of his contentions, learned Counsel relied upon the reported cases of *Amanullah Khan v. The State* (2011 P.Cr.L.J 774), *Mst. Doris Thomas v. The State* (2011 MLD 793) and *Sardar Bahadar Mughal v. The State and another* (2013 P.Cr.L.J 1022).

3. On the other hand, Mr. Mazhar Ali Bhutto, learned Counsel for respondent No.1/accused, has contended that the learned Sessions Judge, Larkana has passed the impugned order after going through the material available before him and appreciating the relevant law for grant of bail. He has also maintained that the case law cited by the learned Counsel for the applicant/complainant do not attract the facts of the present case, therefore, the same were rightly not relied upon by the learned Sessions Judge. He has also contended that the respondent No.1/accused after grant of pre-arrest bail is regularly attending the trial Court and he has neither issued any threat to the prosecution witnesses, nor in any way misused the concession of bail; hence no ground for cancellation of bail has been made out by the applicant/complainant in this criminal miscellaneous application, which merits to be dismissed.

4. The learned DPG appearing for the State supported the impugned order and contended that this criminal miscellaneous application is liable to be dismissed as no valid ground for cancellation of bail granted to the respondent No.1/accused by the learned Sessions Judge has been made out.

5. To appreciate the contentions of learned Counsel for the parties, I deem it appropriate to reproduce the operative part of the impugned order, which reads as under:

“There is more than two months delay in lodging of F.I.R which reflects consultation, 161 Cr.P.C statements of P.Ws are recorded with considerable delay even to F.I.R which appears to be significant, the offence is not falling within the prohibitory clause, the parties are disputed over settlement of account, malafide is also alleged, in that situation the present applicant/accused is appearing to be entitled to be admitted to pre-arrest bail.

No doubt the Honourable High Court of Sindh in case law which is relied upon by learned counsel for the complainant has refused pre-arrest bail to the accused in cases relating to issuance of cheques dishonestly but there could be made no denial to the fact that; the Honourable Supreme Court of Pakistan in case of Zaffar Iqbal has admitted the accused to bail in case relating to issuance of cheques dishonestly by concluding that; the offence is not falling prohibitory clause and grant of bail in such like cases is rule and rejection is an exception, in that situation it is rightly being contended by learned counsel for the applicant/accused while relying upon case of Muhammad Ramzan that; no useful purpose would be served if the present applicant/accused is taken into custody and then is admitted to bail on merits in terms of dictum laid down by the Honourable Supreme Court of Pakistan in case of Zaffar Iqbal.”

6. It may be observed that considerations for cancellation of bail are altogether different from one meant for grant/refusal of bail under Section 497, Cr.P.C. Once bail has been granted by a competent Court of law, strong and exceptional grounds are required for cancellation thereof and it has to be seen as to whether the bail granting order is patently illegal, erroneous and factually incorrect and has resulted in miscarriage of justice. In other words, to interfere in bail granting order is *peri materia* to interference in an acquittal order and that is only possible, if the impugned order was passed in disregard of material available on record or was capricious and arbitrary. Besides, for cancellation of bail very strong, exceptional and cogent reasons regarding misusing, abusing the concession of bail and hampering with prosecution evidence are required. In the instant case,

admittedly the respondent No.1/accused has neither misused or abused the concession of bail nor he has hampered with the prosecution evidence.

7. The only ground raised by the learned Counsel for the applicant/complainant for cancellation of bail is that the learned Sessions Judge while allowing pre-arrest bail to respondent No.1/accused considered the principles governing grant of post arrest bail. In this regard, it may be relevant to observe here that the provisions contained in Section 498, Cr.P.C are subsidiary and ancillary to Section 497, Cr.P.C. Only significant difference for exercising of powers under Sections 497 and 498, Cr.P.C is that while seeking pre-arrest bail accused must show not only existence of reasonable grounds to believe that he is not guilty of offence charged with, but in addition must prove ulterior motives on the part of complainant for bringing home the charge in addition to the humiliation, harassment and malafides. It goes without saying that if a person is otherwise entitled to bail, no useful purpose shall be served by putting him firstly behind bars and then allowing him bail.

8. In the instant case, the learned Sessions Judge after perusing the record granted pre-arrest bail to respondent No.1/accused observing the fact that there is more than 2 months' delay in lodging of F.I.R, which reflects consultation, so also statement under Section 161, Cr.P.C of P.Ws have been recorded with considerable delay even to F.I.R and the offence does not fall within prohibitory clause of Section 497, Cr.P.C. So also the parties have dispute over settlement of account and malafide has been alleged, which entitles the respondent No.1/accused to be admitted to pre-arrest bail. These grounds have not been opposed by the applicant/complainant in this criminal miscellaneous application. The case law cited by learned Counsel for the applicant/complainant do not improve the case pleaded by the

applicant as it relate to the principles laid down for the refusal of bail under Section 497 and 498, Cr.P.C and not to the dictum laid down for cancellation of bail under sub-section (5) of Section 497, Cr.P.C.

9. In view of above discussion, the applicant/complainant has failed to make out even a single ground for cancellation of bail; therefore, I have not found any merits in this criminal miscellaneous application, which is hereby dismissed with no order as to cost.

10. Above are the reasons of my short order of even date,

Qazi Tahir/*