

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Mohammed Karim Khan Agha

Cr. Bail Application No.627 of 2017

Babar Ali son of Rana Shamshair Ali

Vs.

The State

Date of hearing:	08-06-2017.
Date of Order	09-06-2017.
Applicant/Accused:	Through Mr. Mustafa Safvi, Advocate.
Respondent:	Through Mr. Zafar Ahmed Khan, A.P.G.

ORDER

Mohammad Karim Khan Agha, J. By this order I propose to dispose of the pre-arrest bail application moved by the applicant Babar (the applicant), who has been charged with offences under Section 489-F/504/506 P.P.C under crime No.86/2017 lodged at Police Station Boat Basin.

2. The allegation against the applicant/accused according to the contents of the FIR are that on 01.03.2014, the complainant participated in the Committee / VC of Rs.25,00,000/- with his uncle Nadeem and the first Committee / VC was deposited with one Babar Ali son of Shamshar Ali. He purchased said committee / VC from him and against which he gave two cheques bearing No.15783338786 amounting to Rs.4,00,000/- and

No.15783338785 amounting to Rs.3,62,000/-and he deposited the said cheques in his bank account being maintained as J.S. Bank, Teen Talwar Branch, which were dishonored. Thereafter he contacted Babar Ali/applicant/accused on phone and informed him that both his cheques have been dishonored on which he became annoyed and started calling him names and tried to linger on the matter on one pretext or another. The complainant again contacted Babar Ali on phone who said that he will not pay any amount to the complainant as nothing is payable to the complainant and he disconnected the phone by giving threats of dire consequences to the complainant. Under these circumstances the complainant finally registered the F.I.R. in respect of the aforesaid action of the applicant under Section 489-F/504/506 P.P.C.

3. After usual investigation, the challan was filed and the matter is now proceeding before the trial court.

4. Parties heard. In essence the applicant argued that the applicant's interim pre arrest bail granted by this Court vide order dated 09-05-2017 should be confirmed on numerous grounds. In support of his contentions he placed reliance on the cases of **Ghulam Qadir V State** (2007 YLR 1495), **Talib V Hussain V State** (2007 P.Cr.LJ 1064), **Mst Razia Begum V State** (2009 YLR 87) and **Muhammed Zafar V State** (2012 P.CR.LJ 1549). Learned State counsel did not oppose the confirmation of the applicant's pre arrest bail based on the particular facts and circumstances of the case.

5. I have considered the arguments of the learned counsel for the applicant, the State, perused the record and considered the relevant case law.

6. In essence the case revolves around the bouncing of two cheques of a combined amount of approximately RS 7.5 lacs which attracted S.489 (F) PPC for which the applicant is being tried.

7. I am of the considered view that the applicant's pre arrest bail should be confirmed for the following reasons; that there appears to be an element of malafide by the complainant in filing the FIR against the applicant based on the particular facts and circumstances of the case; that the applicant is no longer required for investigation so his arrest would not serve any useful purpose; that the applicant has been regularly attending the court proceedings likewise again his arrest would not serve any useful purpose; that no evidence has come on record that the applicant is a habitual offender of such types of crime; that the amount involved is of a relatively minor value ; that as per police report the complainant had informed the police that he had entered into a compromise agreement with the applicant for which he produced an affidavit and stated that he did not want to proceed with the case or court proceedings against the applicant which lead to the case being disposed of in "C" class by the police which was not accepted by the magistrate and thus prima facie the evidence against the applicant does not appear to be very strong; that the offense does not fall within the prohibitory clause and thus as a

rule in such cases as laid down in the case of **Tariq Bashir V State** (1995 SCMR 34) the grant of bail is a right unless exceptional circumstances exist and in this case in my view exceptional circumstances are lacking.

8. Accordingly, based on the particular facts and circumstances of this case, the applicant's pre arrest bail is confirmed on the same terms and conditions as it was granted by this court vide order dated 09.05.2017.

9. Needless to say that this order ^{is} is only of a tentative nature and shall have no bearing on the outcome of the trial which shall be decided on merits by the trial court based on the evidence before it.

10. This application stands disposed of in the above terms

Dated: 09-06-2017