

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail A. No.S-374 of 2021***

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on O/objection at flag-A..
2. For hearing of bail applciation.

**20.09.2021**

Mr. Ali Ahmed Khan Advocate for applicant.

Syed Sardar Ali Shah D.P.G for state.

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**ORDER**

**ZAFAR AHMED RAJPUT;** Through instant Crl. Bail application, applicant/accused Abdul Hakeem son of Wahid Bux seeks pre-arrest bail in Crime No.27 of 2021 registered at Police Station Rohri under Sections 406, 420, 468, 506/2, 489-F, 34 PPC. His earlier application for the grant of pre-arrest bail bearing No.256/2021 was heard and dismissed by the Additional Sessions Judge-I/MCTC, Sukkur vide order dated 09.03.2021. The applicant was admitted to interim pre-arrest bail by this Court vide order dated 17.06.2021, now matter is fixed for confirmation of the same or otherwise.

2. Briefly stated facts of the case are that on, 11.02.2021, complainant Muhammad Yakoob lodged the aforementioned FIR alleging therein that on 01.09.2020 the applicant, who is broker by profession, offered him to purchase a piece of land, admeasuring 01-20 acres, for total sale consideration of Rs.3,20,00,000/- for that he immediately paid him Rs.10,00,000/- and later in the evening of the same day he further paid some of Rs.10,00,000/- for the owner of the property to applicant, while as per the agreement the balance sale consideration was to be paid in three installments; however, later the complainant came to know that

accused had defrauded him and when he approached to him, he issued him cheque of Rs.20,00,000/- of National Bank of Pakistan, which cheque on being presented was dishonoured.

3. Learned counsel for applicant contends that the applicant is a broker and used to work in the Estate Agency of the complainant. He further states that the complainant and the applicant were having friendly relationship, therefore, the applicant used to keep his cheque book in the Estate Agency of the complainant, who misused the alleged cheque, otherwise the applicant has nothing to do with the alleged transaction which as per agreement, available as annexure-E at page-51 of memo of application, was made between one Zafar Muhammad Qazi and the complainant wherein the applicant acted as witness. He further contends that the alleged cheque has not been issued by the applicant which fact can be ascertained from the bank memo which shows that the same was not returned due to insufficient funds in the account of the applicant but because of alteration and cutting on the cheque. He further contends that the sections in the FIR have been misapplied as none of the offence mentioned in the FIR has been committed by the applicant.

4. On the other hand learned Deputy Prosecutor General contends that it is yet to be determined at trial if any ingredients in respect of offence under Section 406, 420, 468, 506/2, PPC is made out and since the cheque of the applicant has dishonoured, the most alleged act falls within the purview of Section 489-F, PPC which being punishable upto three years does not fall within the prohibitory clause of Section 497 Cr.P.C. He however, admits that the alleged cheque has not been dishonoured for want of insufficient funds but for alteration and cutting in the cheque.

5. None present for the complainant despite the fact that on last date of hearing viz. 23.08.2021 Mr. Arsalan Khokhar Advocate undertook to file power on behalf of complainant.

6. Heard the learned counsel for the applicant as well as Deputy Prosecutor General and perused the material available on record with their assistance.

7. It is an admitted position that whatever transaction was made in respect of immovable property that was between one Zafar Muhammad Qazi and the complainant under a sale agreement reduced in writing on non-judicial stamp paper dated 01.09.2020. From the perusal of said agreement, it appears that the description of immovable property regarding which the parties have entered into a sale transaction is not specifically mentioned in the agreement. It is also an admitted position that the alleged cheque has not been dishonoured for want of insufficient funds in the account of applicant but due to certain cutting and alteration in the cheque. The applicant has however, denied issuance of alleged cheque and has taken plea that since he worked with the complainant as broker, the cheque was lying in his Estate Agency and alleged cheque has been misused by the complainant.

It is yet to be determined at trial if the applicant has committed any forgery or criminal breach of trust to attract provisions of section 406 and 468, PPC while the offence u/s 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. Under the circumstances interim pre-arrest bail granted to applicant vide order dated 17.06.2021 is confirmed on same terms and conditions.

Application stands disposed of.

**J U D G E**

*Ihsan*