

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Application No. 1827 of 2016

Date	Order With Signature Of Judge
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For hg of bail application

25.01.2017.

Mr. Shaikh Rehan Farooq, advocate for applicant.
Mr. Nazir Ahmed Sher, advocate for complainant.
Mr. Abdullah Rajput, A.P.G.

ZAFAR AHMED RAJPUT, J:- Having rejected his first Bail Application No.34/2016 by the learned Judicial Magistrate-X, Malir-Karachi, and second Bail Application bearing No. 1476/2016 by the learned Additional Sessions Judge-II, Malir, applicant/ accused Abid Hussain, through instant criminal bail application, seeks post arrest bail in Crime No.348 of 2016, registered under sections 489-F, 420, 408, 34 P.P.C. at P.S. SSHIA, Karachi.

2. The allegation against the applicant/ accused is that on 23.07.2016 he issued a cheque bearing No. SO-02653138, amounting to Rs.51,00,000/- to complainant Lal Zameen Jan and the same was dishonoured when presented in bank.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that in fact the alleged cheque was not issued by the applicant to complainant but he issued the same as security to one Qasim, who is partner of the complainant in business; that the applicant has no concerned with the joint business of complainant

and said Qasim and if the same cheque has been misused by Qasim, the applicant cannot be stood liable for it as the same was not issued by him to complainant towards repayment of any loan or fulfillment or an obligation; that the alleged offence, being punishable for three years, does not fall within the prohibitory clause of section 497 Cr. P.C., hence the applicant is entitled for the concession of bail.

4. On the other hand, Mr. Nazir Ahmed Sher, learned counsel for the complainant has vehemently opposed this application. He has contended that the complainant is running business of commission agent in the name of Lajpaal Company at New Sabzi Mandi, Karachi and about one year back accused Qasim and Abid induced him for business of fruit, on that the complainant became the partner of Qasim and he paid Rs.88,00,000/- in presence of witnesses, thereafter, they sent fruit of Rs.30,00,000/- to complainant, subsequently they stopped the same on the demand of the complainant for his remaining amount, the alleged cheque was given to him by co-accused Abid and since heavy amount is involved in the transaction, the applicant is not entitled for the concession of bail.

5. The learned A.P.G. while adopting the arguments of learned counsel for the complainant has also opposed the grant of bail to applicant/ accused.

6. Heard the learned counsel for the applicant and complainant

as well as learned A.P.G. and perused the material available on record.

7. It appear that the Investigating Officer during course of investigation has recorded, the statements of PWs, namely, Abuzar son of Azeem Khan and Farooq son of Saalim and they both have stated in their statements that in the year 2015 complainant Lal Zameen Jan, Muhammad Qasim and Abuzar entered into a business agreement but later on after five months Abuzar separated his business from them while Muhammad Qasim and complainant Lal Zameen Jan continued their partnership, wherein complainant used to send money to Qasim from Karachi and the latter used to send Oranges to complainant. The complainant paid Rs.88,00,000/- to Qasim but the Qasim sent him oranges, amounting to Rs.37,00,000/-, meanwhile the partner of Muhammad Qasim, namely, Abid issued cheque of Rs.37,00,000/-, which became dishonoured when presented for encashment. The perusal of the alleged cheque shows that applicant Abid Hussain has made his signature in Urdu language while the amount on cheque is mentioned in English language and the same has not been issued on the name of complainant but as "CASH". From the statements of above mentioned PWs, it prima facie appears that whatever the business dealing was, that was between the complainant and Qasim and the applicant Abid was not partner in their partnership, hence the question of issuing alleged cheque by the applicant/ accused towards repayment of any loan or fulfillment of any obligation is required detailed probe. The alleged offence does not fall within the prohibitory clause of section 497 Cr. P.C. being

punishable for three years. Hence, I allow this application. The applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.3,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits and if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE