

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. B.A. No. S- 810 of 2016

DATED	ORDER WITH SIGNATURE OF JUDGE
06.02.2018	

For orders on MA 7176/17
For hearing

Syed Muhammad Waseem Shah, advocate for applicant.
Mr. Pervaiz Tariq Tagar, advocate for complainant
Mr. Shahid Ahmed Shaikh, DPG

OMAR SIAL, J.- Applicant Shoukat Ali has sought pre-arrest bail in Crime No. 91 of 2016 registered at the Cantonment police station, Hyderabad under Section 489-F P.P.C. Earlier, his bail application was turned down by the learned 1st Additional Sessions Judge, Hyderabad on 23.9.2016.

2. The story narrated in the abovementioned FIR lodged by complainant Rizwan on 14.8.2016 is that he owns Midway Restaurant in Hirabad, Hyderabad. Some time ago he intended to buy one bungalow from the applicant for an amount of Rs.45,000,000 (Rupees 45 Million). He paid the Applicant an amount of Rs.40,000,000 with the understanding that the remaining amount will be paid at the time of registration of the sale deed. It was alleged that the Applicant told the complainant that he has three partners (apparently all owners of the said bungalow) living in the United States and that he will call them to effect the transfer. Subsequently the applicant refused to transfer the bungalow as according to him his other partners are not ready to sell the bungalow. As return of the money given towards the sale consideration by the complainant, the Applicant issued three cheques to the complainant out of which one cheque for an amount of Rs.33,500,000/- was dishonoured when presented at the bank counters.

3. I have heard the learned counsel for the Applicant, complainant and learned DPG. My observations are as follows.

- i. One of the basic requirements of an act to be an offence u/s 489-F P.P.C. is that the cheque which is dishonoured was given dishonestly to fulfil an obligation or for the repayment of a loan.

Upon a query from both, the learned counsel for the complainant and the learned D.P.G., the learned counsel for the complainant submitted that only is there an agreement to sell and a cancellation of that agreement on record but that the signatures on the agreement have also been verified by the hand writing expert. The learned counsel then gave two copies of such agreement (which are not on court record) as well as the report of the hand writing expert. With much respect to the learned counsel, it prima facie appears that the signatures of the Applicant on the two agreements vary greatly and that the same were not sent to the hand writing expert. It appears odd that the cheques in question were sent to the expert for hand writing verification but the two agreements that form an important part of the prosecution case were not sent.

- ii. The cheque in question was issued on 12-7-2016. On 8-8-2008, the Applicant had reported at the City police station in Hyderabad the loss of the said cheque.
- iii. In view of the above, ulterior motive and malafide on the part of the complainant cannot be conclusively ruled out at this stage.
- iv. An offence u/s 489-F P.P.C. carries a potential sentence of 3 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C.

4. For the above reasons, the interim pre-arrest bail already granted to applicant on 28.9.2016 is confirmed on the same terms and conditions. The Applicant is however directed to attend the trial regularly and cooperate fully with the investigation officer.

JUDGE