

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No.476 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail Application.
For Orders on M.A No.3134/2018

06.06.2018

Mr. Muhammad Ashraf Kazi, Advocate for the applicant.
Mr. Shah Muhammad Maitlo, advocate for Complainant.
Ms. Rahat Ahsan, D.P.G. Sindh

Through the instant bail application, applicant/accused Rudab Bibi, daughter of Syed Akbar Ali Shah, seeks bail after arrest in FIR No.98/2018, registered at police station Docks, Karachi under Sections 406/489-F/109/34 PPC.

2. Brief facts of the prosecution case are that the complainant and his partner and their families including sister of his partner Mst. Saima and friends invested huge funds in the firm of applicant / accused through her frontman Sanwal Khan. The amount invested was transferred in the accounts maintained by the accused / applicant. The applicant also managed her business through her other agents frontman Furqan-ud-Din and Shahid Aoi @ Maitlo using unlawful means and deprived the complainant and other persons connected with him from their cash amounting in millions of Rupees and proof of such fraud and cheating in shape of online transfer in bank accounts of present applicant/accused, messages and phone calls and other interactive material with the present accused was available with the Complainant party. The complainant also reported that when suspicious activity was noticed by complainant and his friends, they demanded the return of their amount invested as such the applicant signed cheques of total amounting to Rs.20,21,79,400/- of the account of applicant / accused and same were handed over to Complainant and one agreement was also signed by the frontman of the applicant / accused with the complainant party. Thereafter, the frontman of the applicant namely Sanwal Khan also issued cheque of his account and also

handed over Corolla Car to one of the investor namely Mst. Saima. The above mentioned cheques of total amounting to Rs.20,21,79,400/- handed over were bounced, subsequently the applicant / accused was arrested and her first post arrest bail application was dismissed by the trial Court by order dated **21.3.2018**.

3. The applicant/accused approached the learned Xth Additional Sessions Judge, West, Karachi, for post arrest bail, which was declined vide order dated 27.03.2018. Thereafter, the applicant approached this Court for grant of post arrest bail.

4. Learned counsel for the applicant contended that the applicant is quite innocent and has falsely been implicated in this case by the complainant party without having any cogent evidence against applicant/accused as no offence as alleged or otherwise has been committed by her, she has been involved in this false case for ulterior motive. No specific detail of amount is disclosed in the FIR nor any date and place is given wherein the present applicant / accused has received any amount from the complainant. He further contended that co-accused Sanwal is fiancé of present applicant/accused and her signed cheques were misused by the same accused. He also argued that there is no direct relationship between applicant/accused and complainant party and the bank accounts of company of applicant/accused were not used for alleged investment made by the complainant party. The role assigned to applicant/accused is one whose cheques were given to the complainant and that too not by applicant/accused herself but by her fiancé. He further contended that she has nothing to do with any of the transactions taken place between complainant party and co-accused Sanwal and others. He contended that the FIR is delayed 12 days and the same delay is not explained. The case of applicant / accused falls within the proviso one of Section 497(1) Cr.P.C as she is lady. He lastly argued that applicant is in custody but not a single witness has been examined by the prosecution and the delay has not been attributed to the applicant, as such, concession of bail may be granted to the applicant. In support of his contentions, learned counsel for the applicant has relied upon PLJ 2013 CR. CASE (LAHORE) 497, 2012 YLR 1198 (LAHORE), 2017 MLD 100 (SINDH), PLJ 2013

CR.C. (Islamabad) 376, 2013 Cr.LJ 1591 (Lahore), PLJ 2013 Cr.C (LAHORE) 721 & 2015 Cr. L.J 129 (ISLAMABAD).

5. Learned Additional Prosecutor General Sindh argued that since the sufficient material which directly connect the present applicant / accused with the commission as such she is not entitled to concession of bail. She opposed the bail application.

6. After hearing the learned counsel for the parties and going through the record. I have noticed that most of the contentions raised by the counsel for the applicant/accused are contrary to the record. The applicant is nominated in the FIR and even the amount of dishonoured Cheque No.9774075 for **Rs.42,40,000/-** dated 30.01.2018 and Cheque No.8316865 for **Rs.2,84,54,200/-** dated 12.02.2018 signed by her are mentioned in the FIR. These cheques were given by one Sawal Khan to Complainant as alleged or by the applicant herself is immaterial. The applicant / accused is charged, amongst other, under **Section 489-F PPC**, which reads as follows:-

489F. Dishonestly issuing a cheque. Whoever dishonestly issues a cheque towards re-payment of a loan or fulfillment of an obligation which is dishonored on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which **the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured** and that the bank was at fault in not honouring the cheque.

7. The burden of proof of offence under Section 489-F is on the applicant and not on the prosecution. The defense taken in the memo of bail application that the blank cheques were used by office staff or her fiancé is no defense nor it is prove of existence of the amount mentioned in cheques in her account. To be precise the applicant / accused has issued cheques which were dishonored. The value of dishonoured cheques issued by her comes to **Rs.3,26,94,200/-** and since

the burden of proof of honestly issuing cheques is on her, therefore, the amount for which allegedly cheques were issued has to be secured.

8. The only ground on which the applicant could be admitted to bail is statutory concession to her in terms of first proviso to Section 497 Cr.P.C and also that the punishment is only three years. Therefore, the applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs. **Rs.3,26,94,200/-** and P.R bond in the like amount to the satisfaction of trial Court.

9. 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/accused on merits.

JUDGE

SM