

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 837 of 2018

Applicant : Imran Amir s/o Mehboob Alam
through Barrister Khawaja Naveed
Ahmed

Complainant : Dr. Sara through Farrukh Zia Shaikh,
Advocate

State : Through Mr. Abrar Ali, Deputy
Prosecutor General Sindh.

Date of Hearing : 16.07.2018

Date of Order : 16.07.2018

ORDER

AMJAD ALI SAHITO, J :- Through instant bail application, applicant/accused Imran Amir seeks post-arrest bail in Crime No. 192/2018, registered at Police Station Boat Basin, Karachi for an offence punishable under Section 489-F PPC, after his bail plea has been declined by the learned Additional Session Judge-IX, Karachi South, vide order dated 02.06.2018.

2. Precisely, the relevant facts leading to disposal of instant application are that on 28.04.2018 at 1700 hours complainant Dr. Sara S. Khan widow of Fida Muhammad Khan lodged FIR with Police Station Boat Basin, Karachi that, complainant is a widow and an old lady, after the death of her husband the complainant invested amount with one Imran Amir 0300-8244622 and his wife Sarwat Imran 0321-8244622 and they

promised to pay some monthly amount as profit for monthly household expenses. After the lapse of many months, they did not pay monthly expenses instead they fraudulently tried to grab her principal money after her continuous efforts they gave her cheque of the amount of Rs.50,00,000/- when the complainant went bank to cash the cheque but it was bounced and it was returned back by the bank due to the insufficient amount. They are continuously threatening the complainant that if she goes to the police station against them she will face the dire consequences. Hence, they committed offence under section 489-F, 420 PPC.

3. The applicant/accused was arrested and subsequently remanded in the judicial custody, final report under section 173 was submitted before the trial Court. The applicant/accused had moved bail application before the trial Court as well as Court of Additional Session Judge, but his bail plea was declined, hence he has impugned the order of the learned Additional Session Judge dated 02.06.2018 before this Court.

4. Learned counsel for the applicant/accused, *inter-alia*, contended that the applicant/accused is innocent and has falsely been implicated in this case; that the applicant/accused is a highly educated man, he has been regularly paying interest to Dr. Saira; that the applicant/accused has paid more amount than the actual amount to the complainant as he had borrowed only Rs.50,00,000/- and up-till now paid to Rs.82,00,000/- to the complainant; that the punishment of the present case does not

fall within the prohibitory clause of section 497, Cr. P.C. It is, therefore, prayed that the applicant/accused may be admitted to post-arrest bail. In support of his contention, learned counsel for the applicant/accused has relied upon the case of **Muhammad Tanveer Vs. The State (PLD 2017 Supreme Court 733)**.

5. On the other hand, learned counsel for the complainant strongly opposed for grant of bail and submitted that the complainant is 84 years old lady and no one is her bread earner and from the invested amount she is bearing expenditure of her house; that the complainant has invested amount of rupees fifteen million; that issuance of cheque of Rs.5,000,000 (Five Million) has not been denied by the applicant/accused; that though the offence does not fall within the prohibitory clause of section 497 Cr. P.C., however, the applicant/accused has committed fraud with the complainant by issuing the cheque which was bounced due to insufficient balance; that the complainant has also lodged another FIR No. 232 of 2018 against the applicant/accused in Police Station Daraksha, so the applicant/accused is a habitual offender. Learned counsel for the complainant has relied upon the case of **Muhammad Siddique Vs. Imtiaz Begum (2002 SCMR 242)**.

6. Learned DPG for the State flatly opposed for grant of bail to the present applicant/accused on the ground that applicant/accused not only committed fraud with the complainant and deprived her of the heavy amount of Rs.50,00,000/- (Rupees Fifty Lac) so also issued a check knowingly that the same would not

be honoured by the bank. Per learned DPG, in the facts and circumstances of the case the applicant/accused is not entitled to grant of bail merely for the reason that the offence does not fall under the prohibitory clause under section 497 Cr. P.C.

7. I have heard the learned counsel for the parties at length and perused the record.

8. A perusal of section 489-F, P.P.C. reveals that the provision will be attracted if the following conditions are fulfilled and proved by the prosecution:---

- (i) issuance of the cheque;
- (ii) such issuance was with dishonest intention;
- (iii) the purpose of issuance of cheques should be:-
 - (a) to repay a loan; or
 - (b) to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).
- (iv) on presentation, the cheques are dishonored.
However, a valid defence can be taken by the accused, if he proves that;-
 - (i) he had made arrangements with his bank to ensure that the cheques would be honoured; and
 - (ii) that the bank was at fault in dishonouring the cheque.

9. If the applicant/accused establishes the above two facts through tangible evidence and that too after the prosecution proves the ingredients of the offence then he would be absolved from the punishment.

10. Issuance of cheque amount of Rs.50,00,000/- (Rupees Five Million) by the applicant/accused to the complainant Dr. Sara S. Khan and its dishonoured by the bank is an admitted fact. Memorandum of return of the cheque issued by the bank reveals that the cheque was dishonoured by the bank with the objection **“funds insufficient”**. The objection of the bank prima facie established that the applicant/accused has no intention to pay the amount of Rs.50,00,000/- (Rupees Five Million) to the complainant. He defrauded the complainant of her huge amount by issuing a bogus cheque of his account which he knows that funds are insufficient.

11. So far the learned counsel for the applicant/accused's contention that the offence does not fall within the prohibitory clause of Section 497, Cr. P.C., grant of bail is a rule and refusal is an exception. It is correct that the alleged offence does not fall within prohibitory clause of Section 497 Cr. P.C. however, the applicant/accused has committed fraud with complainant by issuing the said cheque which was bounced due to insufficient balance. Learned counsel for the applicant/accused when confronted with other similar nature criminal case committed by the applicant/accused and the copy of FIR bearing Crime No. 232 of 2018 of PS Daraksha produced by the learned counsel for the complainant before the Court he admitted the same as correct. Admittedly, an offence under section 489-F, P.P.C, is the maximum punishable up to three years R.I and ordinarily in such like cases grant of bail is a rule and refusal is an exception. The

legislature had intentionally kept this offence as non-bailable and it has consistently been held by this Court as well as the Hon'ble Supreme Court of Pakistan that in non-bailable offences grant of bail is not the right of an accused and it is a concession. Reference may well be made to the case of **Shameel Ahmed Vs. The State (2009 SCMR 174)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

“4.....Bail in a case not falling within the prohibitory clause of S. 497, Cr. P.C. -- Principles--Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr. P.C. is not a rule of universal application--Each case has to be seen through its own facts and circumstances--Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse.”

In another case of **Mehmood Siddique Vs. Imtiaz Begum and two others (2002 SCMR 442)** wherein the Hon'ble Supreme Court of Pakistan held that:-

“4.....None can claim bail as of right in non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

12. The case law relied upon by the learned counsel for the applicant/accused is distinguishable from the facts and circumstances of the present case.

13. In view of the above, the learned counsel for the applicant/accused has failed to make out a case for grant of post-arrest bail to the applicant/accused. Resultantly, the instant bail application merits no consideration, which is dismissed

accordingly. The learned trial Court is directed to expedite the matter and decide the same within a period of two months.

14. Needless to mention that the observations made hereinabove are tentative in nature and would not prejudice the case of either party at trial.

J U D G E

Kamran/PA