

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

Cr. Bail Application No.S-164 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

21.02.2019.

Applicant is present in person.

Mr. Nisar Ahmed Durrani, Advocate files Vakalatnama on behalf of the applicant.

Mr. Shahid Ahmed Shaikh, D.P.G.

=

Zulfiqar Ahmad Khan, J.- Through the instant Criminal Bail Application, applicant seeks pre-arrest bail in Crime No.297/2018, registered at Police Station A-Section Latifabad, under section 489/F, 506/2 and 34 PPC.

2. Concisely facts of the case are that complainant Saleem Khan gave Rs.15,00,0000/- to accused Sharafat for purchasing 03 plots in Mehar Ali scheme and 30 Plots in Survey No.84, however, he gave him 06 bogus files and when complainant asked to return the amount, accused issued a cheque bearing No.13068147 dated 02.10.2018 of JS Bank Saddar Branch Cantonment Bazar, Hyderabad for Rs.12,00,0000/-, however, on presentation, the said cheque was returned as dishonoured. Thereafter, on 17.11.2018, complainant went to meet accused at his Estate Agency, (Tooba Estate Agency), where accused Sharafat, Muhammad Imran and Younis Jat were available. Complainant disclosed about dishonouring the cheque and demanded his money, due to which accused became rash and took out pistol, pointed the same towards him whereas co-accused Imran and Younis caught hold him and issued threats of murder, hence complainant after obtaining the order from the Court, lodged F.I.R.

3. Learned counsel for the applicant *inter alia* contends that the applicant is innocent and has falsely been implicated in this case due to enmity over business transaction; that there is inordinate delay in lodging the F.I.R, which has not been explained satisfactorily; that the applicant has not issued any cheque to the complainant; that the ingredients of

section 489-F PPC do not attract in the circumstances of the instant case; that the applicant is not required for any investigation purpose; that the case does not fall within the prohibitory clause of section 497 Cr.P.C; that no direct or indirect evidence has been collected against the applicant; that all the P.Ws are interested. He lastly prayed for grant of pre-arrest bail.

4. Learned Deputy Prosecutor General while opposing the instant bail application contends that the applicant has been nominated in the F.I.R. with specific role; that huge amount is involved in the case; that no proof with regard to any enmity between the parties or missing of the cheque as alleged, has been placed on record; that the delay in lodging the F.I.R. has been plausibly explained. Lastly, he though contended that the applicant may be granted pre-arrest bail without touching the merits of the case at this stage.

5. I have carefully considered the arguments of learned counsel for the applicant, learned D.P.G for the State and perused the material available on record.

6. No doubt, section 489-F PPC does not fall within prohibitory clause, however, if reasonable grounds as well as circumstances are considered, bail can be declined even in respect of such cases which do not fall under prohibitory clause of section 497 Cr.P.C. Appraisal of the record reflects that applicant / accused is directly involved in the present case. As far as the delay in lodging of F.I.R is concerned, the same has been plausibly explained by the complainant that after obtaining orders from the Court of learned Ex-Officio Justice of Peace, he was able to get registered the present F.I.R; thus such delay in view of the above circumstances cannot be considered as fatal to prosecution case.

7. The essential requirements of Section 489-F PPC are:-

- i. a cheque issued dishonestly;
- ii. towards repayment of a loan of fulfillment of an obligation.
- iii. which is dishonoured on presentation.

8. It is also pertinent to mention that the alleged cheque, per applicant's counsel, was missed, however, no proof in shape of any N.C or F.I.R. has been made available on record to substantiate the contention. Under these circumstances, it appears odd that the cheque

for such a huge amount has been manipulated or the same was misplaced. This issue will have to be decided by the trial Court after evidence is led.

9. It is observed that in criminal cases, after registration of an F.I.R, while investigating with such offence, physical custody of the accused person may be required by the investigating agency for ascertaining and verifying the circumstances being alleged by the complainant party and even for confirmation of the circumstances of the case put forth and advanced by the accused person in his defence. It cannot, therefore, be said with any generalization that investigation into a criminal offence is meant only for effecting a recovery from the accused person and in a case where no recovery needs to be effected such accused person cannot be arrested or cannot be refused bail. Mere assertion that alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. applicant cannot claim bail as of right in the case at hand. In this view of the matter the contention of the learned counsel that applicant is not required for any investigation purpose is not sustainable. Apart from above, the applicant has also failed to show any malafide on the part of the complainant, which is one of the prerequisites for pre-arrest bail in a case involving a non-bailable offence. In this context, I am fortified by the case of **Malik Nazir Ahmed v. Syed Shamas-UI-Abbas and others** (P L D 2016 Supreme Court 171).

10. The contention of the counsel that the offence for which the applicant is charged does not attract the prohibitory limb of section 497, Cr.P.C. does not *per se* make him entitled to the concession of bail. Grant of bail in such like cases is not a rule of universal application as each case has to be decided on its own merits. Reliance in this respect may advantageously be placed on the case of **Muhammad Siddique v. Imtiaz Begum and 2 others** (2002 SCMR 442).

11. Accordingly, prima facie and at this preliminary stage of bail, it appears that the ingredients of Section 489-F PPC are being satisfied. It would only after trial and once evidence is led in the trial, the trial Court will be able to conclude whether the cheque was issued in fulfillment of an obligation or otherwise.

12. It also appears from the record that prosecution/ witnesses have fully implicated the applicant/accused specifically in commission of the

alleged offence which also finds support from other incriminating material available on the record therefore, while making tentative assessment, *prima facie* there appear reasonable grounds to believe that applicant / accused is connected with the offence with which he is charged hence he in my humble view, is not entitled for concession of pre-arrest bail.

13. For what has been discussed above, I am of the view that the applicant has failed to make out his case for grant of extra ordinary relief of pre-arrest bail, therefore, the instant bail application is dismissed.

14. Needles to mention here that observations made hereinabove are tentative in nature and thus will not prejudice the case of either party in trial.

JUDGE

S