

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

Cr. Bail Application No.S-1163 of 2018

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 27.02.2019

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Applicant is present on interim bail.

Mr. Chetan S. Kella, Advocate for Applicant.

Syed Mujeeb Alam Shah, Advocate for complainant alongwith complainant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General.

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**Zulfiqar Ahmad Khan, J:** Through the instant Criminal Bail Application, applicant seeks pre-arrest bail in Crime No.116 of 2018, registered at Police Station Cantonment under Section 489-F, PPC.

2. The allegation against the applicant is that he issued a cheque bearing No.1639031251 dated 30.10.2018 of MCB Bank Quaid-e-Azam Road, Badin Branch, amounting to Rs.9,00,000/- to the complainant on account of some transaction of leased land of 31-00 acres (Makata), however, on presentation, the said cheque was returned as dishonoured.

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 ingredients of section 489-F PPC do not attract in the circumstances of the instant case; that the case does not fall within the prohibitory clause of section 497 Cr.P.C. He lastly prayed for grant of pre-arrest bail.

4. Learned counsel for the complainant as well as learned Deputy Prosecutor General while opposing the instant bail application contend 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 has been placed on record; that the delay in lodging the F.I.R. has been plausibly explained.

5. I have carefully considered the arguments of learned counsel for the parties 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 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 pre-requisites for pre-arrest bail in a case involving a non-bailable offence.

9. 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.

10. 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.

11. 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.

12. 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 interim bail granted to the applicant vide order dated 21.12.2018, is hereby recalled and the instant bail application is dismissed.

13. 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**

Tufail/PA