

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

Cr. Bail Appln. No.S- 1184 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing:	19.03.2019.
Date of order:	19.03.2019.

Syed Soofan Shah, Advocate for applicant alongwith applicant.
Ms. Sana Memon, A.P.G. for the State.
Mr. Javed Ahmed, Advocate holding brief on behalf of Mr.
Meer Muhammad Buriro, Advocate for complainant.

SHAMSUDDIN ABBASI, J:- Applicant seeks pre-arrest bail in Crime No.197/2018 registered at Police Station Qasimabad, Hyderabad for offence punishable under Section 489-F PPC.

2. It is alleged by complainant in the FIR that applicant was the employee in Poultry Department and complainant was running the business of Poultry Feeding with the present applicant and there was an outstanding amount of Rs.02 Crores of the complainant against the present applicant and out of said amount Rs.15,00,000/- was paid by the applicant in cash to the complainant whereas for the remaining amount he had given cheques bearing No.0000874953 of Rs. One crore, cheque No.9017971 of Rs.50,000/- and cheque No.6597474 of Rs.4,00,000/- dated 03.03.2016 of National Bank of Pakistan Branch Korangi Town Ship K-Area Market, Karachi which were dishonoured. After refusal of payment, complainant lodged the FIR.

3. It is contended by learned counsel for the applicant that applicant had no business relation with the complainant and the cheques were missing and he had informed the concerned Bank on 13.11.2015 and then on 08.04.2016; that the complainant of this case has suppressed the real facts of the case that the applicant had purchased

the property from complainant which was not owned by the complainant and he had given the said cheques in lieu of the transaction of property purchased by the applicant from the complainant; that there is criminal litigation in between the parties as nephew of the present applicant had lodged FIR bearing Crime No.150 of 2016 against the complainant of this case u/s 420, 468, 34 PPC and FIR bearing Crime No.35/2016 u/s 420, 468, 471, 504 PPC and after usual investigation both the cases have been challaned by the police which are pending adjudication before the trial Court; that due to dispute over the property false FIR was lodged by complainant against the applicant and after usual investigation case was challaned and after full dressed trial, the present applicant has been acquitted in that case vide judgment dated 25.11.2017 by the trial Court.

4. On the other hand, learned A.P.G has opposed the bail application on the ground that two cheques were issued by the applicant which were dishonoured on the presentation hence it seems that he is habitual offender; that no malafide has been shown by the applicant which is the essential requirement in bail before arrest, therefore, he is not entitled for the concession of bail.

5. Heard learned counsel for the applicant, learned A.P.G and perused the material available on record.

6. From the perusal of material, it appears that there are multiple litigations between the parties from both the sides pending since 2016. Even in this case there is delay of 02 years in lodging the FIR and no plausible explanation has been furnished by the complainant for such inordinate delay. The offence with which the applicant is charged is punishable for 03 years which does not fall within the prohibitory clause of Section 497 Cr.P.C. The entire material available on record is based on the documentary evidence hence there is no question of

tampering with the evidence. Applicant is retired government servant. Applicant is a man of advance age and no purpose would be served out to refuse him bail for humiliation and disgrace at the hands of police. In background of multiple litigation between the parties and the delay of 02 years in lodging the FIR, malicious prosecution cannot be ruled out. The offence does not come within the prohibitory clause. In such like cases the grant of bail is a rule and refusal is an exceptional. In this regard I am fortified with the case SHAHNEEL GUL and 2 others v. The STATE reported in 2018 YLR 999, in which it has been held as under:-

“Indeed, the alleged offence is punishable up to 03 years which does not fall within the ambit of restraining clause of Section 497, Cr.P.C. Moreover, after completion of investigation, challan has been submitted and learned trial Court has already framed charge against applicants and they are regularly appearing before learned trial Court and facing their trial. Neither applicants have misused the concession of bail nor frustrated the trial on any pretext. Moreover, the trial of the case is being delayed for want of evidence of the complainant and other witnesses, hence refusal of bail at this stage would not serve any useful purpose, but there is serious apprehension of humiliation and harassment of applicants at the hands of police.”

7. In view of above, I am of the considered view that the applicant has succeeded in making out a case of further enquiry as envisaged under sub-Section 2 of Section 497 Cr.P.C. Case has been challaned. Applicant is attending the trial Court regularly. Accordingly, I allow this bail application and confirm the interim pre-arrest bail already granted to the applicant on same terms and conditions. However, learned trial Court is directed to expedite the matter and conclude the trial within a period of 03 months and submit such compliance report to this Court through Additional Registrar.

8. Needless to mention here that the observations made hereinabove are tentative in nature and shall not be influenced by the trial Court at the time of trial.

JUDGE

Tufail/PA