

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

Cr. Bail application No.S-1194 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicant : **Jawaid Hussain** through M/s. M.R Sethi & Abdul Hameed Dahri, Advocates.

Complainant : **Abid Hussain** through Mr. Anis-ur-Rehman Siddique advocate

The State : through Mr. Shahid Ahmed Shaikh, DPG

Date of hearing : 01.03.2019

Date of decision : 04.03.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant Criminal Bail Application, Applicant namely Jawaid Hussain is seeking post arrest bail in Crime No. 120 of 2018, registered under section 489-F, 506, 34 PPC at Police Station A-Section Latifabad.

2. Prosecution story in nutshell is that there is business transaction of chicken feed between the complainant and the Applicant since three years. The Applicant owed huge amount of Rs.579, 66,305 on the aforesaid account and he was asked to clear the same. The Applicant delivered a cheque No.39080516, amounting to Rs.579, 66,305, to the complainant, which was presented in UBL Bank Gharibabad Sukkur on 27.4.2018. The Bank official informed that the said account is closed vide memo of Bank endorsement. F.I.R. No. 120 of 2018 was registered under section 489-F, P.P.C. on 24-5-2018 at Police Station A-Section Latifabad, Hyderabad for dishonor of cheque dated 25.4.2018 amounting to Rs.579,66,305. The Applicant was arrested in this case and the challan according to the Deputy Prosecutor-General has already been submitted and charge has been framed by the learned trial Court. The learned trial Court declined bail to the applicant vide

order dated 16.11.2018. The applicant moved another bail application before the learned Sessions Court Hyderabad which was too declined vide order dated 21.2.2018. Applicant being aggrieved by and dissatisfied with the impugned orders has filed the instant Bail Application on 29.12.2018.

3. Mr. M.R Sethi, learned counsel for the Applicant has contended that the Applicant has falsely been implicated in the instant case; that the case does not fall within the prohibitory clause. The Applicant is behind the bars since his arrest in this case and he is not required by the police for the purposes of investigation at this stage. The maximum sentence under section 489-F, P.P.C. is three years; that where a case falls within non-prohibitory clause the concession of granting bail must be favorably considered and should only be declined in exceptional cases. He relied upon the decision rendered by the Honourable Supreme Court of Pakistan in the case of *Hakim Ali Zardari v. The State (PLD 1998 SC 1)* and argued that remedy of bail is an independent relief, not much depending on the ultimate result which may ensue. Such remedy can be availed of even in a case where charge against an accused is of a grave nature involving embezzlement of a huge amount; that the report of FBR shows that the Applicant has not made any transaction for about three years which requires further inquiry into the guilt of the Applicant; that the matter pertains to Civil Transaction as such the Applicant cannot be saddled with criminal liability at this stage till found guilty by the competent Court of law. In support of his contention, he further relied upon the principle laid down in the cases of *Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488)*, *Riaz Jaffar Natiq vs. Muhammad Nadeem Dar (2011 SCMR 1708)*, *Mian Muhammad Akram vs. The State (2014 SCMR 1369)* and *Muhammad Tanveer vs. The State (PLD 2017 SC 733)*. He lastly prayed for grant of Bail to the Applicant.

4. In rebuttal, Mr. Anis-ur-Rehman Siddique, learned counsel for the Complainant has refuted the grounds taken by the Applicant in the present Bail Application and vehemently opposed the Bail Application and has contended that the issuance of cheques worth Rs.579, 66,305 by the applicant to the complainant and its dishonor by the bank is an admitted fact between the parties. Memorandum of return of this cheques issued by the bank reveal that this cheques was dishonored by the bank with the objections that Account closed, which is prima-facie evidence that the complainant is deceived by the Applicant; that the aforesaid objections of the bank prima facie establish that

the Applicant had no intention to pay Rs.579,66,305 to the complainant from the day one; that he defrauded the complainant of his huge amount by issuing bogus cheques of his account which was already closed and further which was a photo account; that the applicant is involved in the commission of a series of identical crimes under section 489-F PPC, which has stigmatized him with habitually weighing against grant of Bail; that the act of the Applicant amounts to financial murder of the complainant. He lastly prayed that the Applicant does not deserve any leniency.

5. Mr. Shahid Ahmed Shaikh, learned Deputy Prosecutor General for the State has also vehemently opposed the grant of bail to the Applicant on the ground that prima-facie his involvement in the crime is established; that the charge has been framed in the present case. He prays that direction may be given to the learned trial Court to record evidence of the complainant within a period of one month.

6. I have heard learned counsel for the Applicant, learned DPG for the State, learned counsel for the Complainant and perused the material available on record as well as case law cited at the Bar.

7. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Honorable Supreme Court, while considering the application for grant of bail. The guidelines are that while deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against accused, nature and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State [2010 SCMR 1221].

8. Keeping in view the above guidelines, let me now enter into the question as to whether there is a situation warranting for allowing bail to the applicant, taking into consideration the rival contentions and the facts and circumstances presented in the case in hand. On a careful perusal of the record, the following is the tentative assessment of the case:

- i. A cheque amounting to Rs.579, 66,305/- was dishonored and such memo was issued by the concerned Bank.
- ii. Applicant has admitted that there is business transaction between the parties.

- iii. That the basic ingredients of Section 489-F explicitly show that whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonored on presentation, is liable to be punished with imprisonment which may extend to three years or with fine, or with both.
- iv. That the Bank Manager has confirmed bouncing of the aforesaid cheque upon its presentation.
- v. That Applicant in his memo of Bail Application No.1585/2018 in paragraph-6 has taken the plea that the aforesaid cheque available with the Complainant was taken by the 3rd Party from Applicant just '*Amaanat*'.
- vi. As per Complainant the applicant is involved in the commission of a series of identical crimes under section 489-F PPC and pointed out various FIRs lodged in the country i.e. Crime No.615/2017 of PS City Deebalpur District Okara & Crime No.1246/2017 of City Raiwand, District Lahore against the Applicant in different Police Stations.
- vii. As per Prosecutor the charge has been framed in the present case.

9. Upon perusal of record, it appears that the Applicant has been arrested in the aforesaid crime for dishonor of cheque amounting to Rs.579, 66,305.

10. I am cognizant of the fact that section 489-F PPC does not fall within prohibitory clause. It is well settled principle of law that an offence which does not fall within the aforesaid category does not become a bailable offence automatically, therefore, if the circumstances warrant bail can be refused even in respect of offences not falling under the prohibitory clause of Section 497(1) Cr.PC. Tentative Assessment of the record clearly reflects that applicant is directly charged with an offence under Section 489-F PPC. Apart from above, the Applicant has also failed to show any malafide on the part of the Complainant. Apparently, both the parties have admitted business transaction of chicken feed, therefore, the question of non-issuance of cheque of huge amount by the Applicant is mere a defence theory which can be threshed out at the time of Trial, therefore, 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.

11. *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. While making tentative assessment, prima facie there appears reasonable grounds to believe that applicant is connected with the offence with which he is charged. The case laws cited by learned counsel for the Applicant are distinguishable from the facts and circumstances of the present case.

13. In view of the above facts and circumstances, I am of the opinion that Applicant has not made out a case for grant of post arrest Bail. Therefore, this Bail Application is dismissed with direction to the learned trial court to record evidence of the complainant within a period of one month, whereafter the Applicant would be at liberty to move afresh Bail Application before the learned trial Court on fresh ground, if he so desires.

14. The above findings are tentative in nature which shall not prejudice the case of either party during trial.

15. Foregoing are the reasons of short order dated 01.03.2019.

JUDGE