

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No. 683 / 2020**  
**Syed Waseem S/o Iftikharuddin**

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Date

Order with signature of Judge

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For hearing of bail application.

**20.05.2020.**

Mr. Kausar Ali Shar Advocate for Applicant.  
Ms. Seema Zaidi Deputy Prosecutor General.  
Mr. Farrukh Tasleem Usmani Advocate for Complainant.

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Through this bail application, the Applicant seeks post arrest bail in FIR No. 121/2020 registered at P.S. Gulshan-e-Iqbal, under Sections 489-F and 420 Pakistan Penal Code. The bail application of the Applicant moved before the Trial Court stands dismissed vide orders dated 18.3.2020 against which a further bail application was moved before the Additional Sessions Judge which also stands dismissed vide order dated 10.4.2020. I have heard the Counsel for the Applicant, learned Deputy Prosecutor General as well as the Counsel for Complainant. My observations are as under: -

- i) It appears that as per the FIR the Applicant / Accused had sold some properties against consideration to the complainant and when it transpired that such properties never existed and were a fraud, the applicant was approached and he for settling the dispute had given three post-dated cheques bearing No. D-78210075, D-78210076 and D-78210077 for an amount of Rs. 25,00,000/- each to the Complainant and when presented before the

concerned Bank they were dishonoured due to shortage of funds.

- ii) Learned Counsel for the Applicant has argued that these cheques were given as surety and were not required to be presented before the concerned Bank, whereas, the Complainant in return was required to hand over the files of the properties sold to the Complainant; however, from the record placed before the Court no such material is available nor any such agreement is on record.
- iii) Perusal of the record including the challan further reflects that the Applicant in some other matter also has been implicated in a case of identical nature under Section 489-F as he had given certain cheques to someone else which were also dishonoured again regarding some property dispute and was found in custody during investigation of instant FIR. While confronted the Counsel for the Applicant argued that in that case the Applicant has been granted bail by this Court. Today, he has placed such order before the Court; however, on perusal, it appears that the bail application has been granted conditionally with directions to deposit the amount of cheques before the Nazir, whereas, the Applicant instead of doing so has moved an application for reviewing such order which is pending and he is still in custody. In fact, the said order as of today does not amount to grant of bail as the applicant himself is not satisfied with such direction. While further confronted he has not shown any consent for passing of a similar order for depositing the amount of this FIR. Therefore, this argument is of no help.
- iv) That as per settled law, involvement and implication in more than one cases is not always an impediment in granting or entertaining bail in another case; however, it needs to be appreciated that this principle has to be applied cautiously in a case registered under Section 489-F. The marginal distinction in grant or refusal of bail in a

cases under Section 489-F is primarily dependent on the conduct of the Applicant that as to whether on a tentative assessment, it could be discern that the cheques were given with any dishonest intention or not. Here in this matter, as per the record placed before the Court the cheques were given to settle some claim or fulfilment of an obligation towards the complainant regarding selling of fake properties, whereas, this Court has not been assisted in any manner with any material to suggest that these cheques were given as surety as contended. This prima facie depicts that the cheques were not given with any honest intention as apparently they have been dishonoured for lack of funds. Similar is the position in the other case registered against the Applicant.

- v) The foundational elements to constitute an offence under this provision are issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfilment of an obligation and lastly that the cheque in question is dishonored<sup>1</sup>.
- vi) On a tentative assessment of the material placed before the Court, and notwithstanding the fact that punishment provided is a maximum of 3 years, the conduct of the applicant whereby he has failed to controvert that cheques were not issued with dishonest intention, at present offence squarely falling within the ambit of Section 489-F PPC applies to his case and disentitles him to call for concession of bail.

In view of hereinabove facts and circumstances, instant bail application fails and is accordingly dismissed. Since the Applicant is in custody from 31.12.2019 and the maximum punishment is 3 years, it is expected that the trial court will conclude the trial within 90 days

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<sup>1</sup> Mian Allah Ditta v The State (2013 SCMR 51)

from today, and if not, then the applicant would be entitled to file a fresh Bail Application on the ground of delay. It is needless to state that the observations made hereinabove are tentative in nature and shall not have any effect on the trial which shall proceed in accordance with law.

**J U D G E**

Arshad/