

## IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 311 of 2020

APPLICANT : Muhammad Imran s/o Eid Muhammad,  
through Mr. Muhammad Asif, Advocate.

RESPONDENT: The State,  
through Mr. Sagheer Abbasi, A.P.G.

Hearing on : 31.03.2020.

Decided on : 31.03.2020.

### ORDER

ABDUL MOBEEN LAKHO, J.- Being aggrieved and dissatisfied by the impugned order dated 29.01.2020 passed by the Additional Sessions Judge-VI, Karachi-South in Bail Application No.249/2020 whereby the post-arrest bail of the present applicant was dismissed, the applicant/accused has approached this Court seeking bail.

2. Briefly stated, the facts of the prosecution case as narrated in the FIR are that on 16.02.2019 the complainant namely Aziz ur Rehman s/o.Qurban Hussain Lodged the FIR as P.S Boat Basin, Karachi stating therein that his neighbor Muhammad Imran who posed himself to be a businessman, borrowed a sum of Rs.50,00,000/- on different dates with regard to expand his business against written agreement in presence of Badar Khan, Nadeem Kamal and Intekhab. Muhammad Imran told him that his shipment is coming and thereafter he will return his amount after one month alongwith profit at the rate of 25% profit of the same amount. After a month the complainant demanded his amount from Muhammad Imran, initially he kept complainant on false hopes and thereafter had given him three (03) cheques bearing No.11058653 of dated 12.06.2018 in sum of Rs.10,00,000/-, cheque No.11058664 of dated 09.07.2018 in sum of Rs.7,00,000/- and cheque No.10435724 of dated 22.06.2018 in sum of Rs.5,00,000/-. Thereafter he gave two more cheques bearing No.11058665 of dated 24.01.2019 and cheque No.11058666 of dated 24.01.2019 each in sum of Rs.7,00,000/-. The complainant deposited all five cheques in his account for encashment but first three were dishonored due to non-availability of funds whereas the two others were dishonored as bank account was closed. Hence, the FIR.

3. Learned counsel for the applicant/accused contended that applicant/accused is absolutely innocent and has committed no offence as alleged in the FIR, but the complainant with malafide intention and ulterior motive implicated him falsely; that the offence u/s 489-F is not punishable to death or imprisonment for 10 years hence does not fall under the prohibitory clause of Section 497 Cr.P.C in such type of cases grant of bail is a rule while rejection is an exception; that the applicant is remanded to judicial custody, challan has been submitted, he is no more required for the purpose of further investigation and his further remaining behind the bars will not improve the persecution case in any manner; that it is settled principle of the law that mere pendency of more than on FIR is no ground for rejection of bail. Further the accused cannot be declare as habitual offender until and unless he is convicted from any Court of law; that according to the complainant himself it was business transaction but the complainant with malafide intention and ulterior motive converted the civil liability into criminal proceedings; that it is settled principle of law that nobody should be detained for indefinite period as law is bail not jail; that applicant/accused is ready to furnish solvent surety equivaent to the amount mentioned in the FIR i.e. Rs.36,00,000/- and he is not previous convicted and there is no possibility of absconsion of the accused, if he releases on bail, hence, prayed for grant of bail.

4. Learned A.P.G, representing the State recorded his no objection for grant of bail to the applicant/accused, if applicant is ready to deposit the amount mentioned in the FIR.

5. I have heard the learned counsel for the applicant/accused and Learned A.P.G and perused the material available on record.

6. Allegedly an agreement was executed between the parties and during the course of business, 05 different cheques allegedly issued by the applicant/accused favoring the complainant for a sum of Rs.50,00,000/-, out of which the first 03 cheques were dishonored due to insufficient funds in account while 02 cheques were returned due to closure of same account, on presentation in bank. The accused was arrested and in due course challan was submitted on 26.04.2019. It is yet to be determined by the trial Court that the cheques if any were issued to the complainant in some kind of obligations and/or with the intention

to cheat and defraud him of his legitimate payment which can only be done after recording of evidence. The maximum sentence under section 489-F PPC is three years. The case does not fall within the prohibitory clause. The petitioner is behind the bar and not required by the police for the purpose of investigation at this stage. The accused during the arguments submitted that he is ready to deposit the amount with the Nazir of this Court. Thus keeping in mind the dictum laid down in the case of (Zafar Iqbal .. VS .. Mohammad Anwar and others (2009 SCMR 1488) wherein it was held that:

...  
“As far as section 489-F, P.P.C. is concerned it prescribes sentence of 3 years. The Courts, in such-like cases where offence falls within the non-prohibitory clause, consider favourably by granting bail as a rule but decline to do so in the exceptional cases. As far as exceptional circumstances are concerned those are to be taken into consideration depending upon each case”.

...

7. The upshot of above discussion is that the applicant / accused is enlarged on post arrest bail subject to his furnishing solvent surety equivalent to the amount mentioned in the FIR i.e. in the sum of Rs.36,00,000/= [Rupees Thirty Six Lac] only and P.R.Bond in the like amount to the satisfaction of Nazir of this Court.

The criminal bail application is disposed of. These are the reasons of short order dated 31-03-2020.

JUDGE

Jamil Ahmed / P.A