

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.419 of 2020

APPLICANT : Asif Khan s/o. Faramosh Khan,
through M/s. Tousif & Muzamil Ali, Advocates.

RESPONDENT: The State,
through Mr. Khadim Hussain Khoharo, A.P.G.

Hearing on : 30.04.2020.

Decided on : 30.04.2020.

ORDER

ABDUL MOBEEN LAKHO, J.- Through instant criminal bail application, applicant/accused Asif Khan S/o Faramosh Khan seeks post arrest bail in FIR No.210 of 2029, registered under Section 489-F/420/406/34 PPC at Police Station North Nazimabad, Karachi. His earlier Cr. Bail application bearing No.45/2020 impugned order dated 16.01.2020 passed by the IInd Additional Sessions Judge Karachi-Central whereby the post-arrest bail of the present applicant was dismissed, the applicant/ accused has approached this Court seeking bail.

2. Brief facts of the FIR as stated by the complainant are that complainant is a retired Civil Engineer, he had paid an amount of Rs.2575000/- through cheque No.17424032 and cash amount of Rs.40,000/- to Muhammad Noman son of Asghar in respect of business on 11.04.2017 in the office situated 35-15 Block A North Nazimabad Karachi so that Noman could purchase two cars and used them for his company Motor Exchange. Noman purchased from my given amount a Toyota Corolla No. AVA-819, which he got transferred in the name of his son Adnan Rasheed but second vehicle Toyota Corolla No. BAZ-171 of which only photocopy of documents was handed over to me and said that this vehicle will be transferred soon and original file will be handed over soon Muhammad Noman paid Rs.70000/- in lieu of rent against both the vehicles upto one year but did not transfer the Toyota BAL-171 on one pretext or the other. In the month of May 2018, when rent was due and was not given to me against said vehicles, he requested Muhammad Noman and his business partner if he cannot pay rent return the vehicles to him and he rescind the agreement and upon his

perpetual requests neither rent was paid to him nor his cars were returned to him, he out of suspension and doubt to the CPLC to check his cars and found that BAZ-171 was got transferred and registered in the name of one Muhammad Asghar and later Muhammad Noman further sold out to Muhammad Jawaid and got the same transferred in his own name which is fraud and after his continuous efforts the business partner of Muhammad Noman namely Asif Khan issued a postdated cheque for 2nd August 2019 which was to be encashed on 30th August 2019 bearing No.20077425 of Account No 0502790299903 Bank HBL Hyderi Branch which was dishonoured due to insufficient balance on 2nd September his claim is against Muhammad Noman and Asif Khan son of Faramosh Khan regarding dishonour of cheque and fraud. That interim charge sheet bearing No. Nil of 2019 was submitted on dated 19.12.2019 and final charge sheet bearing No. 159/2020 was filed before the learned Trial Court.

3. Learned counsel for the applicant/accused state that the applicant is innocent and have been made victim by the complainant in the instant FIR illegally, malafidely and without lawful jurisdiction. The applicant is innocent and has been falsely implicated in this case. However, it is matter of record that dispute is between complainant and one Muhammad Noman; that the applicant has no any business relationship with the complainant; that the cheque in question was not issued in regard to any business transaction between complainant and instant applicant/accused; that the bare reading of FIR reveals that there does not exist any business relationship between complainant and instant applicant/accused; that the applicant/accused is not under any obligation viz business of return of loan to the complainant; that there exists civil dispute between the complainant and accused Muhammad Noman to which the instant applicant/accused has nothing to do with and complainant lodged FIR against instant applicant/accused; that the prosecution has misapplied above mentioned sections. Above all, the complainant has not business relationship with the instant applicant/accused; that offences under Section 489-F/4406/420/34 PPC does not fall within the prohibitory clause. Hence the applicant deserves the concession of bail; that there is unexplained and undue delay of more than 100 days in commission of alleged offence and lodging of FIR which inflicts serious and unimpeachable doubts of falsehood of FIR; that

the matter requires further inquiry and no evidence so far has come on the record which could directly implicate the applicant/accused with the instant crime. Keeping in view the said principle of law, the applicant is entitled to post arrest bail in the interest of justice and equity; that every accused is innocent until proven guilty therefore, at this stage the accused cannot be saddled with criminal liability when the allegations leveled against him are yet to be put to the test of evidence; that no fruitful purpose shall be served by keeping the applicant behind the bars for indefinite period of time. Ultimately, if the applicant found innocent and acquitted of the charges leveled against him then the period spent in jail can never be compensated resulting in grave miscarriage of justice; that the applicant is neither previous convict nor a hardened criminals or a habitual offenders as such he is entitled for bail by the Hon'ble Court. Reliance is placed on Mohammad Nadeem Anwer Versus NAB and others (PLD 2008 Hon'ble Supreme Court 645); that it is yet to be determined as to complainant was in business relationship with the instant applicant/accused. However, FIR has been lodged against the applicant/accused on account of ulterior motives on the part of complainant to which applicant/accused has nothing to do with; that this is first bail application filed by the applicant in the instant FIR before Hon'ble High Court. However, the learned trial Court and the learned Court of IInd Additional District & Sessions Judge Karachi Central dismissed the bail applications of the applicant/accused; that the applicant is a respectable person and is ready and prepared to furnish solvent surety to the satisfaction of this Hon'ble Court. Hence, the FIR.

4. Learned A.P.G, representing the State, opposed the granting bail to the applicant/accused on the ground that subject cheque was issued by the present applicant/accused.

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

6. Admittedly there is no agreement between the complainant and present applicant/accused and the complainant has alleged business transaction with one Muhammad Nouman. So far as the subject cheque, pertaining to the account of applicant/accused, is concerned, it is yet to be proved that the same was issued by the present applicant/accused in favour of complainant in some kind of obligations and/or with the intention to cheat and defraud him of his legitimate payment of otherwise, which can only be determined by the learned trial Court after recording of evidence of the parties and the same cannot be looked into at bail stage. The maximum sentence under section 489-F PPC is three years. The case does not fall within the prohibitory clause. So also the applicant/accused is behind the bar and not required by the police for the purpose of investigation at this stage. Moreover, since the counsel for the accused during arguments has also submitted that applicant/accused is ready to deposit the amount of alleged cheque as surety with the Nazir of this Court, therefore, 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".

...
The applicant / accused is enlarged on post arrest bail subject to his furnishing solvent surety in the sum of Rs.13,00,000/- and P.R Bond in the like amount to the satisfaction of Nazir of this Court.

7. The criminal bail application is disposed of. These are the reasons of short order dated 30-04-2020.

JUDGE