

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.604 of 2020

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on	:	19.05.2020
For Applicant	:	Mr. Liaquat Ali Khan, Advocate.
For State	:	Ms. Amna Ansari, Addl.PG alongwith IO/SIP Muhammad Shiraz, PS K.I.A, Karachi.
For complainant	:	Syed Naimatullah Shah, Advocate alongwith complainant.

Kausar Sultana Hussain, J.:- On dismissal of IInd bail Application No. 1506 OF 2020, by the learned trial Court, vide order dated 17.04.2020, the applicant Ziauddin Gabol has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 22/2020, under Section 489-F, PPC, registered at Police Station Korangi Industrial Area, Karachi.

2. Story of the prosecution in nutshell is that complainant Kamran Sarwar lodged an FIR on 04.01.2020 at about 02.30 pm, alleging therein that he is Sales Manager in Sindh Feed Allied Product, Korangi Industrial Area, Karachi and he has been authorized by the owner of the company for lodging FIR on their behalf, he produced an authority letter. He stated that the company has business relations with the applicant / accused Ziauddin Gabol son of Amin Gabol, who purchased products from the company and in this connection, he issued 2 cheques bearing Nos. (1) 10452139 and (2) 10452140 of Bank Al-Habib, Gadap Branch, Karachi valued at Rs. 15,00,000/- each (Total valued Rs. 30,00,000/-) dated 09.04.2019. He deposited the said cheques in the company's account No. 25422, MCB, KIA Branch, Karachi, but the said cheques on presenting were bounced on 10.4.2019 and 11.4.2019, thereafter, he contacted the applicant / accused but he made excuses. Previously some other cheques of accused had

already been bounced and in this connection one FIR No. 1124 of 2019, under Section 489-F PPC was also lodged in this police Station, inspite of that the accused is not ready to pay such amount. Hence this FIR.

3. Learned counsel for the applicant/accused has argued that the applicant / accused is innocent and has not committed any alleged offence, but the complainant just to damage the respect and dignity of the applicant / accused and to humiliate get him involved in this false case. Learned counsel for the applicant/accused has pointed out that this is a civil nature dispute among the parties, but the complainant with malafide intention converted the same into Criminal nature dispute, hence the matter requires further inquiry. Learned counsel for the applicant/accused has pointed out that the complainant has lodged this FIR with unexplained delay of 25 days for which he has given no reasons, therefore, the matter requires further inquiry. Learned counsel for the applicant / accused has further pointed out that the present applicant / accused has already filed Civil Suit No. 09 of 2020 before this Court against the complainant's company for Declaration, Cancellation of Cheques, Rendition of Accounts, Permanent Injunction and Damages and same is still pending, which shows that the complainant is misusing the post dated cheques just to black mail, harass and to cause mental torture. He further argued that the accused has already been made/cleared all the amounts to the complainant's company, whereas the accused has material evidence in order to show that he is innocent and there is no liability is lying towards the accused, but the complainant's company after receiving amount become dishonest and did not return the postdated cheques, and with malafide intention and ulterior motives are registering the false and fabricated FIRs against the present accused, which also creates serious dent upon the prosecution story. The learned counsel for the applicant/accused has prayed for release of the applicant/accused on bail, as according to him he is in jail

since the day of his arrest and he is ready to furnish surety against his release to the satisfaction of this Court.

4. Learned D.P.G. has strongly opposed the bail application on the ground that the applicant/accused is habitual to issue these types of cheques of the same account, which he has already closed. Lastly, she prayed for rejection of bail application of the applicant/accused.

5. After hearing arguments and perusal of record it reveals that two bail applications of the applicant / accused have been dismissed on merits and the present bail application is IIIrd bail application. The plea of the learned counsel for the applicant / accused that he has filed a Civil Suit against the complainant for Declaration, Cancellation of Cheques, Rendition of Accounts, Permanent Injunction and Damages, therefore, lodging present FIR by the complainant against the applicant / accused shows his bad intention to damage his reputation and business cannot be considered owing to the reasons that mere filing Civil Suit does not impose restrictions upon the claimant not to initiate criminal action under Section 489-F, PPC against the person, who dishonestly and knowingly issued cheques that no funds are available in his Bank Account. It is held in 2010 P.Cr.L.J 351 that pendency of Civil Suit could not bar the proceedings in the Criminal Court. While advancing arguments the learned counsel for the applicant / accused emphasized on the point that these cheques were issued by the applicant / accused in the name of complainant's company as security as it was the routine of their business and on making payment to the complainant's company he used to take it back and as per such routine the applicant / accused has paid cash of Rs. 30,00,000/- to the complainant's company but the company inspite of receiving cash in question did not return his cheques rather with bad intention presented the said cheques before the Bank and after getting dishonored both the cheques he lodged

present FIR. The learned counsel for the applicant / accused on query of the Court was unable to show the alleged cash payment receipts of Rs. 30,00,000/- to the complainant, which created doubt about claim of the applicant / accused to pay cash of cheques amount to the complainant's company. Section 489-F PPC clearly lays down that whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation, is liable to face the legal consequences on his being dishonored.

6. Whatever mentioned above, I reached at the irresistible conclusion that the applicant / accused is not entitled to grant of bail. Consequently, the instant bail application is dismissed with direction to the learned trial Court to conclude the trial within a period of three (3) months.

7. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

8. Above are the reasons of short order dated: 19.05.2020.

J U D G E

Fahim/PA