

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.873 of 2020

Applicant : Muhammad Shahid S/o Abdul Qadir
Through Mr. Mohammad Asif,
Advocate

Complainant : Huma Ikramullah D/o Ikramullah
Through Mr. Altaf Hussain Khoso,
Advocate

Respondent : The State
Through Mr. Sagheer Ahmed Abbasi,
Assistant Prosecutor General, Sindh

Date of hearing : 05.08.2020

Date of order : 05.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.108/2016 registered under Sections 489-F/34 PPC at PS Aziz Bhatti, Karachi, after his bail plea has been declined by Sessions Judge, Karachi East vide order dated 28.02.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that the impugned cheque was presented on 25.02.2016; whereas the applicant left the country on 16.02.2016 so it is impossible for the applicant/accused to issue the said cheque to the

complainant; that the cheque might have been in the custody of the complainant which was misused by her; that the offence does not come within the prohibitory clause; that the applicant/accused is in jail and is no more required for further investigation. He lastly prays for grant of post-arrest bail to the applicant/accused. In support of his contentions, he has relied upon the case of '*Riaz Jafar Natiq vs. Muhammad Nadeem Dar and others*' (2011 SCMR 1708).

4. On the other hand, learned counsel for the complainant as well as learned APG have vehemently opposed for grant of bail to the applicant/accused on the ground that before leaving the country, applicant/accused had issued the said cheque and subsequently the same was found bounce on presentation. In support of his contentions, learned counsel for the complainant has relied upon the cases (1) *Adeel Shaban Hirani vs. The State* (2018 YLR 1365), (2) *Imran Khan Orakzai vs. The State and another* (2016 MLD 1450) and (3) *Shameel Ahmed vs. The State* (2009 SCMR 174).

5. I have heard the learned counsel for the parties and have gone through the material available on record.

6. The contention of the learned counsel for the complainant is that before leaving the country, the applicant/accused had issued a cheque amount of Rs.700,000/- to complainant Mst. Huma Ikramullah in order to fulfill his obligation of the contract as parties had business terms with each other. Further, when the cheque was presented the same was dishonoured with the endorsement that '**account was closed by the applicant**'; hence, the ingredients of section 489-F, PPC are very much applicable.

7. Issuance of cheque amount of Rs.700,000/- by the applicant/accused to complainant Mst. Huma Ikramullah and its dishonoured by the bank is an admitted fact. Memorandum of return of the cheque issued by the bank

reveals that the cheque was dishonoured by the bank with the objection 'account has been closed by the applicant'. The objection of the bank prima facie established that the applicant/accused has no intention to pay the amount of Rs.700,000/- to the complainant. He defrauded the complainant of her huge amount by issuing allegedly a bogus cheque of his account which he knows that his account is closed.

8. So far the learned counsel for the applicant/accused's contention that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., grant of bail is a rule and refusal is an exception. It is correct that the alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C. however, the applicant/accused has committed fraud with complainant by issuing the said cheque which was bounced due to closing of account. Admittedly, an offence under section 489-F PPC is the maximum punishable up to three years R.I and ordinarily in such like cases grant of bail is a rule and refusal is an exception. The legislature had intentionally kept this offence as non-bailable and it has consistently been held by this Court as well as the Hon'ble Supreme Court of Pakistan that in non-bailable offences grant of bail is not the right of an accused and it is a concession. Reference may well be made to the case of **Shameel Ahmed Vs. The State (2009 SCMR 174)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

"4.....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles-- Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application--Each case has to be seen through its own facts and circumstances--Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse."

In another case of **Mehmood Siddique Vs. Imtiaz Begum and two others (2002 SCMR 442)** wherein the Hon'ble Supreme Court of Pakistan held that:-

“4.....None can claim that bail as of right is non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

9. In view of the above, learned counsel for the applicant/accused has failed to make out a case for grant of post-arrest bail to the applicant/accused. Resultantly, the instant bail application merits no consideration, which is dismissed accordingly. The learned trial Court is directed to expedite the case and decide the same within a period of three months after receipt of this order.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA