

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Justice Amjad Ali Sahito**

Criminal Bail Application No.813 of 2020

Applicant : Husnain Ahmed S/o Nisar Ahmed  
Shaikh  
Through M/s. Muhammad Farooq  
Khan, Shujja Abbasi & Humaira Aftab,  
Advocates

Complainant : Syed Asif Khursheed S/o Syed Ahmed  
Ali  
Through Mr. Arshad H. Lodhi,  
Advocate

Respondent : The State  
Through Mr. Talib Ali Memon,  
Assistant Prosecutor General, Sindh.

Date of hearing : 06.10.2020

Date of order : 06.10.2020

## **ORDER**

**AMJAD ALI SAHITO, J --** Through this Bail Application, the applicant/accused seeks pre-arrest bail in Crime No.03/2020 registered under Section 489-F PPC at PS Samanabad Karachi after his bail plea has been declined by IInd Additional Sessions Judge, Karachi Central vide order 22.04.2020.

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 by the complainant with mala fide and ulterior motive; that there is a delay in the lodgment

of the FIR and no plausible explanation has been furnished by the complainant; that after the grant of bail, the applicant/accused is regularly attending the Court; that the trial Court has framed the charge and examined the complainant as well as I.O. of the case; that at this stage, any observation of this Court may prejudice the case of either party; that after issuance of cheque, the applicant has paid the amount of Rs.50,000/- to the complainant as such receipt is available at Page 89 of file. He lastly prays for confirmation of pre-arrest bail.

4. On the other hand, learned counsel for the complainant as well as learned APG have opposed for confirmation of bail on the ground that on presentation of cheques issued by the applicant/accused, they were found bounced/dishonoured, therefore, sufficient material is available on record to connect him with the commission of the offence.

5. I have heard the learned counsel for the parties and have gone through the material available on record. It is an admitted position that the applicant/accused had issued two cheques amounting to Rs.50,000/- and Rs.250,000/- respectively, which became dishonoured on presentation. Further, the evidence of the I.O. of the case and the complainant have been recorded before the trial Court, the trial is in progress and proper course is in such situation would be to direct the Learned trial court to conclude the case within a specified period. The reliance is placed in the case of **Rehmatullah v. The State (2011 SCMR 1332)**; wherein the Hon'ble Supreme Court of Pakistan has held that:

***“3. Heard. The petitioner was granted bail on 21-11-2008, which was cancelled by the learned High Court on 19-3-2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor-General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the***

*learned trial Court to conclude the trial of the case within a specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously.*

*4. For the foregoing reasons, present petition is converted into appeal, allowed and bail granting order dated 6-4-2009, passed by this court, is confirmed. However, learned trial Court is directed to conclude the trial of the case within a period of two months from the date of receipt of copy of this order.”*

6. The maximum punishment is provided for an offence under section 489-FPPC is up to three years, which does not fall within the prohibitory clause of section 497, Cr.PC. The claim of the applicant that he has paid an amount of Rs.50,000/- to the complainant but he has denied the same, which is yet to be determined at the time of conclusion of the trial. Learned Counsel for the applicant pleaded mala fide on the part of the complainant that he has given cheques to the complainant as a surety but same has been misused and lodge false FIR against him.

7. In view of the above and taking guideline from the cited case, learned counsel for the applicant/accused has succeeded to make out the case of applicant/accused for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicant/accused vide order dated 05.06.2020 is hereby confirmed and the bail application is **allowed**. However, learned trial Court is directed to conclude the case preferably within one month after receipt of this order.

8. It is made clear that if applicant/accused misuses the concession of bail, learned trial Court would be at liberty to take appropriate action.

JUDGE

Kamran/PA