

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1710 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

28.01.2021

Mr. Asif Ibrahim Memon, Advocate along with Applicant (on bail).

Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.

Mr. Siraj Ahmed Mangi, Advocate for the Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Muhammad Rehan seeks his admission on pre-arrest bail in Crime No.136/2020 of Police Station Gulberg, Karachi, under Section 489-F PPC. The case, after investigation, has been challaned by the police, which is now pending for trial before the Court of VIIth Judicial Magistrate/MCTC, Karachi (Central) vide Criminal Case No.1716/2020 (re-the State Versus Rehan). The bail plea preferred by him before first forum was declined by means of order dated 05.10.2020, hence this bail application.

Pursuant to directions issued under earlier order, the trial Court/link Judge, has furnished its report with regard to the progress of the trial, which reveals that PW-1/Operation Manager has been examined on 12.12.2020; whereas, no one has been appearing on behalf of the complainant.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that though the applicant is nominated in FIR; however, said FIR is delayed for about 6 months and no plausible explanation has been furnished by the prosecution for such an inordinate delay. He next submits that out of 19 lacs, applicant has paid 9 lacs while remaining amount is yet to be returned by him. He; however, submits that offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C and the trial has commenced, therefore, case against applicant requires further inquiry.

On the other hand, learned Assistant P.G, Sindh opposes the bail application on the ground that there is no denial of the cheques issued by the applicant, therefore, no case for anticipatory bail is made out.

Learned counsel for the complainant also opposes the bail application and submits that huge amount is involved, therefore, applicant does not deserve concession of bail in terms of Section 489-A Cr.P.C.

Heard arguments and perused record. Admittedly, the cheques in question as mentioned in FIR, were allegedly issued by applicant on 20.12.2019 and 25.12.2019 which were presented in the bank concerned on 27.12.2019 and were declared bounced by the bank concerned, even then complainant remained mum for 6 months and did not lodge FIR even has failed to justify the delay caused by him in lodgment of FIR. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution more particularly when there is no plausible explanation. The entire evidence of the prosecution case rests upon documents which are in custody of the prosecution itself, therefore, question of tampering with the prosecution evidence or absconding of the accused does not arise. As is evident from the report furnished by trial Court, applicant has joined the trial proceedings and there is no complaint on his part for misuse of concession extended to him.

In the circumstances and in view of above, case against applicant requires further inquiry within the meaning of sub-section 2 to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed; interim bail granted earlier to applicant **Muhammad Rehan son of Rais Uddin** on 06.11.2020 is hereby confirmed on same terms and conditions.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr.P.C. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned, over fax, for compliance.

JUDGE