

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.33 of 2021

<i>Date</i>	<i>Order with signature of Judge</i>
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1. For orders on M.A No.251/2021.
2. For hearing of Bail Application.

17.02.2021

Ms. Asma Khan, Advocate for the Applicant.
Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh.
Mr. Riaz Ahmed Sabzoi, Advocate for the Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Muhammad Shakeel seeks his release on post arrest bail in Crime No.536/2020 of P.S Shah Faisal Colony, Karachi, under Section 489-F PPC. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 07.01.2021; hence, he has approached to this Court through this Application.

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 FIR is delayed for about a month; whereas, applicant has filed civil suit bearing No.2241/2019 against the complainant which is pending for trial before the Court of Senior Civil Judge, Karachi (East). She further submits that the amount of Rs.600,000/- was borrowed by the applicant from complainant which stands repaid to him; however, when he made demand of the cheque in question which according to her was issued by him in blank status, complainant by taking summersault has filled it with huge amount only to exert illegal pressure upon the applicant so that he may meet with his unjustified demands. She further submits that case has been challaned whereas the complainant is avoiding to appear and applicant is in jail right from the date of his arrest; hence, case against applicant requires further

inquiry. In support of his contention, he places reliance upon the following case laws;_

1. 2020 YLR 2294 Lahore.
2. 2020 P.Cr.L.J 1445 Lahore.
3. 2020 SCMR 1268 SC.
4. 2020 SCMR 861
5. 2018 P.Cr.L.J 469 Lahore.
6. 2020 YLR Note 22 Lahore.
7. 2011 YLR 374 Lahore
8. 2013 P.Cr.L.J 1591 Lahore.

On the other hand, learned Addl. P.G, Sindh appearing for the State opposed the bail application on the ground that accused is nominated in FIR; besides, the amount involved in the case is huge one, therefore, he is not entitled for the concession of bail. He; however, could not controvert the fact that offence with which he stands charged, carries maximum punishment of 3 years and the FIR is delayed for about a month.

Learned counsel for the complainant also opposes the bail application on the ground that applicant has not denied the signature or issuance of cheque. As far as pendency of civil suit filed by the applicant is concerned, he submits that cheque shown under the claim is different from cheque in dispute. In support of his contention, he places reliance upon the cases reported as *2009 SCMR 174, 2018 MLD 1521 and 2017 YLR 694*.

Heard arguments, record perused. As is admitted, incident is said to have taken place on 27.02.2020; whereas, the report thereof, was lodged on 21.11.2020 though the distance between P.S and place of occurrence is only one (1) k.m. Moreover, the mode of payment through which complainant party paid disputed amount to applicant has not been brought on record to believe that such a huge amount was borrowed by the applicant from complainant. In support of her contention, she has adduced copies of the receipts issued by the complainant which confirm arguments of learned counsel for the applicant that applicant has already paid said amount to him; however, the complainant had not disclosed this fact in his FIR. Moreover, the case is being tried by the Magistrate; however, after recording evidence of the parties, if prosecution may succeed to prove its charge against accused even then punishment of more than 3 years cannot be visualized. In case of *JEHANZEB KHAN Versus The STATE* through

A.G. Khyber Pakhtunkhwa and others (Supra), Honourable Supreme Court of Pakistan while granting bail to the petitioner has held in para-4 of the Judgment, as under;_

“4. Adverting to the petitioner’s case, though there is a reference to issuance of bank cheques and their failure on the bank counter, nonetheless, details of financial obligation in satisfaction whereof the instruments were purportedly issued is conspicuously missing in the crime report. Substantial amounts notwithstanding, nonetheless, offence complained is punishable with three years imprisonment of fine or with both as such does not attract the statutory bar. Petitioner’s continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars as a strategy for punishment. A case for petitioner’s release on bail stands made out. Criminal petition is converted into appeal and allowed; the petitioner shall be released on furnishing bonds in the sum of rupees one million with two sureties each in the like amount to the satisfaction of the learned trial Court/duty Magistrate.”

In view of above factual position, the case against applicant requires further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Muhammad Shakeel son of Muhammad Rafiq**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail. Learned trial Court is further directed to conclude the trial within three (3) month’s time under intimation to this Court.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A