

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Application No.S-663 of 2021

DATE JUDGE	ORDER	WITH	SIGNATURE	OF
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For orders on office objections.  
For hearing of main case.

08-11-2021

Applicant Syed Qurban Ali Shah is present on interim pre-arrest bail granted to him by this Court vide order dated 13.08.2021.

Mr. Mian Taj Muhammad Keerio, Advocate for the applicant.

Mr. Kashif Hussain Agha, Advocate along with complainant.

Ms. Safa Hisbani, Assistant Prosecutor General, Sindh.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - Through instant bail application, the applicant Syed Qurban Ali Shah is seeking his admission on pre-arrest bail in Crime No.12 of 2019, registered at Police Station G.O.R Hyderabad, for offenses registered under sections 489-F, 420, 34 PPC.

2. The accusation against the applicant is that on 4.11.2018, he delivered a cheque of Rs. Ten million due to certain business transactions, the same was presented in Bank; however, the same was returned to him due to stoppage of payment by the payee. Finally, the complainant succeeded in getting the F.I.R registered with the concerned police station under sections 489-F, 420, 34 PPC. the applicant being aggrieved by and dissatisfied with the inclusion of his name in the aforesaid crime surrendered before the learned trial court whereby initially he was admitted to pre-arrest bail but subsequently, the same was recalled vide order dated 4. 8.2021, then he approached this court for the same relief which was granted vide order dated 13.08.2021.

3. I have heard the learned counsel for the applicant and complainant as well as learned Assistant P.G, on the aforesaid pleas.

4. This Court vide order dated 13.08.2021 granted interim pre-arrest bail to the applicant on the premise that there is the unexplained delay of more than two (02) months in the lodgment of F.I.R; and, the cheque in question has not been issued by the complainant. The punishment for section 489-F PPC is up to three (03) years which does not fall within the prohibitory clause of section 497 (2) Cr.P.C. Record further shows that co-accused Mumtaz Ali Shah has already been acquitted of the charge by the learned trial Court.

5. learned Assistant P.G. opposed the confirmation of interim pre-arrest bail to the applicant because ingredients of Section 489-F P.P.C are fully attracted and satisfied in the instant case and that there is documentary evidence in the shape of cheque and memo issued by the bank authorities. She further contended that no suit for cancellation of cheque in question has been filed by the applicant, nor any malafide on the part of complainant/prosecution has been shown and on the contrary, the complainant has implicated the applicant-accused in the subject crime based on the certain business transaction and obtained amount from him and for repayment of such amount he issued a cheque in question, which has been dishonored; that the State is duty-bound to record objection in every case.

6. It is well-settled law that grant of bail before the arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of the law for ulterior motives and it cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 Cr. P.C i.e. unless he established the existence of reasonable grounds leading to a belief that he was not guilty of the offense alleged against him and that accused has to show malafides on the part of complainant/ prosecution. Reliance in this regard is placed upon the case of Mukhtiar Ahmed v. The State and others (2016 SCMR 2064) and Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427).

7. At this stage learned counsel for the complainant has submitted that the parties have patched up outside the Court. The complainant Zafar Ali is present in court confirms the position; and,

recorded his consent to the extent that if the interim bail already granted to the applicant vide order dated 13.08.2021 in the aforementioned crime is confirmed in the same terms.

8. Prima-facie, the maximum punishment for the offence under Section 489-F PPC is three years which does not fall within the ambit of prohibitory clause of Section 497(I) Cr.P.C. and consequently, bail is to be granted as a rule and refusal is an exception; that the dispute regarding payments is a business dispute between the parties, involving a controversy regarding alleged facts by the parties, and is to be determined during trial proceedings; that it is settled law that recovery ought to be made through Civil Proceedings under Order XXXVII of the CPC and that the bail should not be withheld as punishment.

9. In principle the law on bail has been enumerated by the Honorable Supreme Court in *Tariq Bashir and others vs. The State* [PLD 1995 SC 34], wherein it is held that “in bailable offenses, the grant of bail is a right and not favour, whereas in non-bailable offenses the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offenses into two categories i.e. (i) offenses punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offenses punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offenses falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example; (a) where there is the likelihood of abscondance of the accused; (b) where there is the apprehension of the accused tampering with the prosecution evidence; (c) where there is the danger of the offense being repeated if the accused is released on bail; and (d) where the accused is a previous convict. The same principles have been reiterated in *Muhammad Tanveer vs. The State and another* [PLD 2017 S.C 733], wherein it is held as under:-

“once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all courts throughout the country including the Special Tribunals and Special Courts.”

10. I do not find that there exist exceptional circumstances that support denial of bail to the applicant pending trial, as he is not required for investigation, cannot tamper with the record, coupled with the statement of the complainant that they settled their matter outside the court and will agitate their point of view before the learned trial court. Be that as it may, let the trial court take care of all pleas of the parties at the trial stage.

11. In view of the above position of the case, coupled with the statement of the complainant, I am of the tentative view, the applicant has made out a case for pre-arrest bail. Interim bail granted to the applicant vide order dated 13.08.2021 is hereby confirmed on the same terms and conditions. The applicant is directed to appear before the trial court to face the trial without fail. However, in case the applicant fails to appear, the trial Court shall be at liberty to cancel his bail without making any reference to this Court.

12. The observation recorded hereinabove is tentative just for bail application, which shall not prejudice either party at the trial stage.

**JUDGE**

*\*Hafiz Fahad\**