

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1357 of 2021

Muhammad Humayun Qadri,

Applicant through:

Khawaja Saif-ul-Islam, advocate
alongwith Syed Ahmed, advocate

The State,

Respondent through:

Mr. Zahoor Shah, DPG

Date of order:

31.12.2021

ORDER

Adnan-ul-Karim Memon, J. Applicant Muhammad Humayun Qadri has earlier been admitted to ad-interim pre-arrest bail by this Court vide order dated 14.7.2021. Now the matter is fixed for confirmation of pre-arrest bail or otherwise. The applicant has been booked in Crime No.556/2021, registered at PS Defence, Karachi, under Sections 489-F PPC.

2. Facts of the case as per FIR are that on the alleged date, time and place, the applicant issued one cheque bearing No.00000708 amounting to Rs.35,00,000/- dated 25.11.2020 on account of business dealing with applicant and one Faisal Sultan. The complainant deposited the said cheque in the bank but same was dishonored on 31.3.2021 and such fact was disclosed by the complainant to the applicant who asked the complainant to deposit again but same was again dishonored on 06.4.2021 and on 13.4.2021, compelling the complainant to report to police for registration of the criminal case against the applicant under section 489-F PPC, such FIR, was registered on 01.7.2021.

3. Heard learned counsel for the applicant, who reiterated the contents of the application and contended that the applicant is innocent; that the cheque issued by the applicant was dishonored on 13.4.2021 and FIR has been lodged on 01.7.2021 with an inordinate delay of more than three months without any plausible explanation; that the basic ingredients of 489-F PPC are missing in the FIR as complainant failed to disclose that applicant issued the alleged cheque. It is further contended that the offense does not fall within the prohibitory clause of Section 497 Cr.P.C.; that the dispute is civil, but the complainant with mala fide intention converted the same into criminal proceedings. He further submitted that the applicant issued the subject cheque to one Faisal Sultan as security for having a business partnership with each other and subsequently the matter was settled between the parties with a certain amount under receipt. However, the applicant insisted on the return of the cheque but the same could not be materialized, compelling the applicant

to stop the payment of the cheque; that Faisal Sultan installed a dummy person (complainant) and malafidely registered the FIR against the applicant on 01.07.2021 after a considerable period. Lastly, learned counsel has prayed for confirmation of interim pre-arrest bail earlier granted to the applicant.

4. Complainant is called absent, though served, without any intimation, therefore, in his absence, learned DPG has been heard on behalf of the state, who has submitted that sufficient material available on record, which shows that the applicant has committed the offense under Section 489-F PPC and pre-arrest bail is extraordinary relief which cannot be granted without establishing mala fide on the part of the complainant.

5. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record.

6. The allegation against the applicant is that he issued a cheque to the complainant, which on presentation was dishonored and, therefore, a criminal case under section 489-F, P.P.C. was registered against him, and he has obtained pre-arrest bail from this court on 14.7.2021.

7. Section 489-F, P.P.C. was originally inserted in Pakistan Penal Code, 1860 by Ordinance LXXII of 1995, providing conviction for counterfeiting or using documents resembling National Prize Bonds or unauthorized sale thereof and while the same was part of the statute, again under Ordinance LXXXV of 2002, another Section under the same number viz. 489-F of P.P.C. was inserted on 25-10-2002 providing conviction and sentence for the persons guilty of dishonestly issuing a cheque towards repayment of loan or fulfillment of an obligation, which is dishonored on its presentation. In that newly inserted section 489-F of P.P.C., the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend to 3 years or with fine or with both. The cheque amount involved in the offense under such section is never considered stolen property. Had this been treated as stolen property, the Investigating Agency would certainly have been equipped with the power to recover the amount also as is provided in Chapter XVII of P.P.C. relating to offenses against property. The offense under section 489-F, P.P.C. is not made part of the said Chapter providing the offenses and punishments of offenses against property, rather in fact the same has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks.

8. In the cases registered under Chapter XVII, the police in case of theft, extortion, dacoity, robbery and breach of trust are empowered to even get recovery

of the subject matter of crime, but in the cases registered under Chapter XVIII, the only remedy provided for the prosecution is the conviction of the accused and no process of recovery can be effected for the offenses relating to documents or trade of property marks.

9. When on 25-10-2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of statute book providing the mode of recovery of the amounts subject-matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under section 489-F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense. The maximum punishment provided for such an offense cannot exceed 3 years. Even this conviction of 3 years is not an exclusive punishment. By using the word "or" falling in between the substantive sentence and the imposition of fine, the Legislature has provided the punishment of fine as an independent conviction, and this type of legislation brings the case of such nature outside the scope of prohibitory clause of section 497, Cr.P.C. The possibility cannot be ruled out and it would remain within the jurisdiction of the trial Court that ultimately the sentence of fine independently is imposed and in such eventuality, nobody would be in a position to compensate the accused of the period he has spent in incarceration during the trial of an offense under section 489-F, P.P.C.

10. I have experienced that in almost every case, where an accused applies for the concession of bail in the case under section 489-F, P.P.C., it is oftenly opposed on the ground that a huge amount is involved and it is yet to be recovered. The police agency also requests for the physical remand of the accused and the cancellation of bail to facilitate the process of recovery of the amount, in question, in the criminal investigation. No such process can be allowed to be adopted either by the Courts dealing with the matter of remand or trial of the offense under section 489-F, P.P.C. or the Investigating Agency to effect recovery. In business circles, the issuance of cheques for security purposes or as a guarantee is a practice of routine, but this practice is being misused by the mischief-mongers in the business community and the cheques, which were simply issued as surety or guarantee are subsequently used as a lever to exert pressure to gain the unjustified demand of the person in possession of said cheque and then by use of the investigating machinery, the issuer of the cheque is often forced to surrender to their illegal demands and in the said manner, the provisions of this newly inserted section of the law are being misused. Securing the money in such a manner would be termed extortion.

11. Primarily, in bail matters, it is the discretion of every Court to grant the bail, but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under section 489-F, P.P.C. Every transaction where a cheque is dishonored may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly that the cheque in question is dishonored.

12. In the instant case, prima facie, the circumstances indicate that the cheque in question was not issued to the complainant Shahzad Iqbal rather to one Faisal Sultan as per Annexure-C Page-41 towards repayment of some outstanding for the fulfillment of an existing obligation, however, the complainant Shahzad Iqbal came into the picture and lodged FIR No. 556/2021 with PS Defense though the alleged offense took place on 13.04.2021 and reported to 01.07.2021 after approximately 03 months.

13. That being so, one of the foundational elements of section 489-F, P.P.C. is prima facie missing. The invocation of penal provision would therefore remain a moot point. The ground that prosecution is motivated by malice may not in these circumstances be ill-founded.

14. For the reasons discussed supra the interim pre-arrest bail granted to the applicant Muhammad Humayun Qadri vide order dated 04.7.2021 is hereby confirmed in the terms that the applicant shall furnish further solvent surety in the sum of Rs.500,000/- (Rupees five hundred thousand only) and PR Bond in the like amount to the satisfaction of the Nazir of this Court.

15. The observation recorded hereinabove is tentative shall not prejudice either party in the trial.

16. These are the reasons for my short order dated 31.12.2021, whereby the applicant's pre-arrest bail was confirmed.

JUDGE