

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1317 of 2021

**Intekhab Alam Qureshi,**

Applicant through:

Mr. Mehmood-ul-Hassan, advocate  
alongwith applicant

The State,  
through:

Mr. Zahoor Shah, DPG

**Muhammad Farhan,**

complainant through:

Mr. Zulfiqar Ali Khan Jalbani, advocate

**Date of hearing:**

**30.12.2021**  
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## ORDER

**Adnan-ul-Karim Memon, J.** Applicant Intekhab Alam Qureshi is seeking pre-arrest bail in F.I.R No. 432 of 2021, for an offense under section 489-F P.P.C at Liaquatabad Police Station, Karachi, *inter-alia*, on the ground that the alleged offense under section 489-F PPC does not fall in the prohibitory clause of section 497 Cr.P.C. as such he is entitled to for the relief as provided under section 498 Cr.P.C.

2. It is contended by the learned counsel for the applicant that there was an unexplained delay of more than three months in lodging the FIR which fact alone is sufficient for the grant of pre-arrest bail; that the alleged claim of the complainant is fictitious and bogus as till date he has not initiated any recovery proceedings against the applicant for recovery of the alleged amount of the subject cheque; that the alleged offense does not fall within the prohibitory clause of Section 497 Cr.P.C.; that investigation in the subject FIR has been completed and a charge sheet has been submitted before the trial Court; the applicant is attending the proceedings before the trial Court regularly; and, there is no possibility that he will tamper with the evidence or will influence the witnesses of the prosecution if the interim bail granted to him is confirmed on the same terms and conditions as earlier granted by this Court vide order dated 09.07.2021. Learned counsel lastly submitted that the applicant was forced to compromise the matter on 27.02.2020 and on the very day he was already under custody. Be that as it may, I intend to decide the matter on merit.

3. Mr. Zulfiqar Ali Khan Jalbani, learned counsel for Complainant, has contended that complainant had invested Rs.70,00,000/-(Rupees Seventy Lac) for purchase of plot with accused; that accused had purchased a plot which was disputed being a civil suit against that plot pending before this Court and this Court granted stay in the said suit; that applicant compromised with plaintiff in the said suit and received certain amount from plaintiff; that in lieu of the above, the applicant issued

a cheque of Rs.70,00,000/- to the complainant, however, a cheque amounting to Rs.50,000/- on presentation with the Bank was dishonored; that applicant accused is habitual cheater, who used to defraud the innocent people; that applicant accused dishonestly issued cheque to complainant, which was dishonored; that applicant accused admitted business transaction with complainant however refused to pay back his due amount; that applicant accused did not deny in bail application about the settlement arrived between them in the court of C.J&J.M-X, Karachi Central in previous case/FIR No.57/2020, under section 489-F PPC of P.S. Liaquatabad, Karachi, and issuance of cheques including present cheque as mentioned in FIR of the present case; that there was no malafide on the part of complainant to lodge present FIR which was result of previous transaction, settlement and case/crime mentioned in FIR of present case; that Extra Ordinary Relief of pre arrest bail cannot be granted to the applicant in case where no such malafide was found on the part of complainant; that cheque in question was dishonored with remarks of insufficient funds in the account of applicant; that fraud has been committed by applicant with complainant, because, a huge amount of Rs.70,00,000/- (Rupees Seventy Lac) which was sole earning and saving of life of complainant which was usurped by applicant; that the Superior Courts have held that the dishonoring of cheque as financial murder of not only the affected person but also his whole family. He prayed to dismiss the instant bail application.

4. While adopting the above submissions made on behalf of the complainant, learned DPG submits that all the ingredients of Section 489-F are present in the instant case, and as such, the matter does not require any further inquiry, particularly when the execution of the cheque is not denied by the applicant.

5. I have heard learned counsel for the applicant and complainant and the learned DPG and have also perused the material available on record.

6. The learned trial Court while rejecting the bail application of the applicant has gone to the deep root of the case and indirectly decided the case against the applicant, however, failed to look into the aspect of the case that at the time of signing the settlement agreement by and between the parties in the court of C.J&J.M-X, Karachi Central in FIR No.57/2020, registered under section 489-F PPC, the applicant was handcuffed and was under judicial /police remand.

7. Tentative assessment of the record reveals that the applicant is nominated in the subject FIR on account of dishonoring of cheque of Rs.50,000/- (Rupees Fifty Thousand). Besides that there is a civil dispute between the parties concerning the purchase of the plot; that alleged offense took place on 22.02.2021 and was reported on 24.05.2021. This delay of about three months in reporting the alleged crime against the applicant. If it is assumed that the complainant was waiting to see the fate

of the other cheques as portrayed by the complainant, even then there was a delay of three months in lodging the FIR. Such unusual and long delay has not been explained at all, let alone in a satisfactory manner, either in the FIR or during the investigation. Moreover, the applicant who is present along with his counsel has categorically stated that the date when the subject settlement arrived by and between the parties and such cheque was handed over to the complainant by the applicant when he was already under custody, which factum has not been disclosed in the FIR by the complainant and even the learned Magistrate failed to take stock of this unusual happening in his Court, which prima facie, amounts to forcing the applicant to sign an agreement under duress. Prima facie, the dispute alleged in the FIR appears to be that of a civil nature and it is for the trial court to look into the aspect of the case as discussed supra.

8. In view of the above facts and circumstances of the case, this case requires further inquiry into the guilt of the applicant as provided under section 497 Cr.P.C.

9. It is also an admitted position that investigation, in this case, has been completed and a charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question of probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if his bail is confirmed. Moreover, the material evidence relating to the subject cheque would be documentary evidence, which would either be with the complainant or with the bank of the complainant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. The offense under Section 489-F alleged against the applicant does not fall within the prohibitory clause of Section 497(I) Cr.P.C.

10. In view of the above, the principle that grant of bail in such offenses is a rule and refusal an exception, authoritatively and consistently enunciated by the Hon'ble Supreme Court, is attracted in the instant case. Therefore, malafide of the complainant and police cannot be ruled out at this stage and point in time. Thus, the applicant is entitled to the confirmation of bail earlier granted to him vide order dated 09.07.2021.

11. It is clarified that the observations made herein are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

12. In view of the above, the interim bail granted to the applicant / accused vide order dated 09.07.2021 is hereby confirmed on the same terms and conditions. However, if the concession of bail is misused by the applicant in any manner

whatsoever, the learned trial Court will be at liberty to take action against him under the law, including cancellation of bail without referring the matter to this Court.

13. These are the reasons for my short order dated 30.12.2021, whereby I confirmed the pre-arrest bail of the applicant on the same terms and conditions as discussed supra.

**JUDGE**

Zahid/\*