

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.1800 of 2021

**Faisal Malik**

Applicant through:

Mr. Hassnain Ali Choochan, advocate  
along with applicant

The State,  
through:

Mr. Faheem Hussain Panwhar, DPG  
along with SI/IO Imtiaz Hussain, PS  
Darakhshan, Karachi

Complainant through:

Mr. Muhammad Nizar Tanoli, advocate

**Date of hearing:**

**29.12.2021**  
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### **ORDER**

*Adnan-ul-Karim Memon J.* Applicant Faisal Malik is seeking pre-arrest bail in FIR No.553/2021 of PS Darakhshan, District South, Karachi registered for the offense under Section 489-F PPC.

2. This Court vide order dated 23.9.2021 admitted the applicant on pre-arrest bail. Today, the matter is fixed for confirmation or otherwise.

3. Mr. Hassnain Ali Choochan, learned counsel for the applicant, has mainly contended that due to business dispute, the applicant has been booked in the alleged crime; that the subject FIR has been falsely lodged against the applicant on the premise that he never issued any cheque to the complainant in lieu of any amount, however, the said cheques were missing and the complainant misused it and presented the same with the concerned bank and subsequently the same was dishonored; that the ingredients of section 489-F, are missing in the present case; that the FIR has been lodged with the delay of one month and ten days without any explanation. It is further contended that this is a case of harassment on the part of the complainant and police; that the applicant has grave apprehension of being arrested in the alleged crime at the behest of the complainant who has mala fide intention to book the applicant in the crime to extract money; that as per clause 12 of the partnership agreement, the case of the applicant needs to be looked into by the learned Civil Court of plenary jurisdiction having jurisdiction. He, therefore, prayed for confirmation of the interim pre-arrest bail earlier granted to the applicant vide order dated 23.09.2021.

4. On the contrary, learned counsel for the complainant raised the hue and cry with the assertion that the applicant has cheated the complainant and caused colossal loss to his business by giving two bogus cheques of Rs.15,50,000/- each bearing No.48857269 and 48857267 and the same on presentation before the concerned bank

was dishonored; that the applicant is not entitled to the concession of extraordinary relief as provided under Section 498 Cr.P.C. He further pointed out that the applicant has a criminal history and is involved in seven cases of similar nature, thus he can be declared as a habitual offender. He prays for the dismissal of the instant bail application.

5. Learned DPG has supported the stance of the complainant and prayed for dismissal of this bail application on the analogy that no extra-ordinary relief could be granted to the applicant in such circumstances of the case when an innocent person has been cheated.

6. I have heard learned counsel for the parties and perused the material available on record.

7. Tentative assessment of record reflects that the applicant issued two cheques of Rs.15,50,000/- each bearing No.48857269 for Rs.15,50,000/- and No.48857267 for Rs.15,50,000/- in favor of complainant Abdul Rehman and on presentation with the concerned Bank the same were dishonored vide Bank endorsement dated 16.7.2021 and the plea was taken by the applicant that there was a partnership between the parties on profit and loss basis in connection with the business of restaurant and due to heavy loss in the said business on account of COVID lockdown. Prima facie, this plea cannot be taken into consideration at the bail stage for the reason that it is for the trial court to look into the version of the applicant so far as the loss to the business is concerned. However, it does not mean that the complainant be defrauded by giving bogus cheques.

8. Investigating Officer present in Court has submitted that the applicant is involved in seven cases of similar nature by placing on record the detail of cases and has cheated the public at large from time to time. However, he requested custody of the applicant for further investigation in the matter. Be that as it may, it is well settled that grant of pre-arrest bail is an extra-ordinary remedy in criminal jurisprudence; it is the diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law; therefore an accused seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill, the criminal case as it seriously hampers the course of the investigation. Reliance is placed upon the cases reported as Rana Abdul Khaliq vs. The State (2019 SCMR 1129).

9. In the present case the essential requirement for the grant of pre-arrest bail i.e. mala fide, an ulterior motive, or abuse of process of law, situations wherein the

Court must not hesitate to rescue innocent citizens are conspicuously missing. Grant of bail to accused before his arrest 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 establishes the existence of reasonable grounds leading to the 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. But, in this case, none of the above conditions appears to be satisfied. Reliance in this regard may be 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).

10. Since, the applicant-accused has failed to show a single malafide on the part of complainant/ prosecution to falsely implicate him in the case of 489-F PPC and there appears no reasonable ground to believe that he was not guilty of the offense alleged against him, as per record made available before this Court, therefore, extraordinary relief of concession of bail cannot be granted to him at this stage. In addition to the above, his absence for today also disentitles him for grant of extraordinary concession of pre-arrest bail. Accordingly, the instant bail application stands dismissed. Consequently, interim pre-arrest bail already granted to applicant vide Order dated 23.09.2021 is hereby recalled.

11. The observations recorded hereinabove are tentative, shall not prejudice at trial Court. Let the trial Court record evidence of the parties and conclude the same within two months from the date of order, such compliance be made through MIT-II of this Court.

12. These are the reasons for our short order dated 29.12.2021 passed by this Court, whereby interim pre-arrest bail granted to the applicant vide order dated 23.09.2021 was recalled.

**JUDGE**