

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2264 of 2021

Muhammad Tariq,
applicant through:

Mr. Khalid Mumtaz, advocate

The State,
Through:

Ms. Rubina Qadir, DPG along with
ASI/IO Nadeem Ahmed, PS Bilal
Colony, Karachi

Complainant:

Shahzad Ahmed, son of the
Complainant is present in person

Date of hearing:

29.12.2021

Date of order:

07.1.2022

ORDER

Adnan-ul-Karim Memon, J. – Through this bail application, applicant Muhammad Tariq seeks bail after arrest in Crime No.646/2021, registered under Sections 420/468/471/470/489-F/34 PPC at PS Bilal Colony, Karachi.

2. Facts of the case as per FIR are that brother in law of the complainant namely Muhammad Tariq (applicant / accused) and his partner namely Abdul Wahid alias Sony son of Maqbool Shah came to his house situated at Sector 5M and they both convinced them for invest their capital in their business, they handed over four files of four plots situated at Gulshan-e-Kaneez Fatima Cooperative Housing Society, Surjani Town, Karachi Block-11, bearing No.3, 4 and Block 9 Plots No.10 and 1. They both collected Rs.960,00,000/- from them at different times, they also collected Rs.97,900/- for obtaining NOC and also collected Rs.226,800/- for FBR when they inquired about the status of the files found that these files are bogus, they demanded back the principal amount, but the accused used delaying tactics ultimately they executed an indemnity bond and mutual *Iqrarnama*, further co-accused Abdul Wahid issued three cheques bearing No.30835814 to 30835816 amounting to Rs.20 lac and one of them was Rs.8 lac, these all cheques on presentation in the bank were dishonored. Such report of the incident was given to Police Station Bilal Colony for registration of F.I.R., which was registered on 03.8.2021.

3. I have heard Mr. Khalid Mumtaz learned counsel for the applicant, who reiterated the contents of the application and contended that the applicant is innocent and committed no crime; that there is civil nature dispute among the interrelated parties. Learned counsel further submitted that the applicant did not issue any cheque, therefore, Section 489-F PPC is not attracted against the present applicant. He further pointed out that the complainant's son filed a summary suit as well as lodged two FIRs, which had already been disposed of in terms of compromise between the parties; now the complainant lodged the present FIR in his personal capacity just to extort money from the applicant which is not permissible under the law. He added that, before the subject matter, some litigation had already been

pending in Court of law, where the complainant and his son had already patched up and received Rs.15,00,000/- from the applicant and now the complainant has lodged the instant FIR based on false and fabricated averments, therefore, the matter requires further inquiry as required under section 497(2) Cr.P.C. Learned counsel emphasized that the alleged incident took place 3½ years ago; and reported to police by the complainant with an inordinate delay, with malafide intention; that all the sections except 489-F and 468 PPC are bailable, hence, the applicant is entitled to post arrest bail in the aforesaid crime. He lastly prayed for allowing the instant bail application.

4. On the other hand learned DPG for State; and, the son of the complainant vehemently opposed the bail application of the applicant. It is argued that the present applicant is the real brother-in-law of the complainant and committed fraud with the family members with the active connivance and collaboration of his partner namely, Abdul Wahid alias Sony who is still at large. It is further submitted that both the accused entered into an *Iqrarnama* and submitted an indemnity bond dated 03.02.2020; and acknowledged that they have sold six plots to the complainant, his wife, and son against the amount of Rs.146,50,000/-. The said property files were verified from the concerned departments and found fake, thereafter, some family settlement was made between the complainant and both accused, however, all the cheques were later on dishonored, therefore, the complainant lodged the instant FIR and his son and wife also lodged different FIRs against the applicant and another. He lastly prayed that the bail application of the applicant may kindly be dismissed.

5. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record. I am fully cognizant of the well-settled principle that at the bail stage this Court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in vacuum. The Court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, *prima facie* some tangible evidence which, if left unrebutted, may lead to the inference of the guilt of the accused.

6. Tentative assessment of the record reflects that applicant has admitted in paragraph 4 of the grounds that *Iqrarnama* and indemnity bond was reduced into writing on 03.02.2020, wherein they have further endorsed their view point that they had sold out 06 plots to the complainant, his wife, and son against the amount of Rs.146,50,000/-; however, the subject property files upon verification from the concerned department, were found fake; the subject cheques handed over to the complainant, later on, were also dishonored on presentation with the bank; thus different FIRs were lodged against the applicant.

7. While dilating upon the sections of law applied in the FIR, it is observed that Sections 420 and 471 PPC are bailable as per II-Schedule of the Code of Criminal Procedure, 1898, whereas, the offence under Section 468 PPC though is non-bailable but entails maximum imprisonment up to seven years. A pressing need is felt to mention here that in Section 497 Cr.P.C., a positive language is couched for the grant of bail in respect of offences having less than 10-years imprisonment and a stringent criteria is laid down for grant of bail in offences punishable with death, imprisonment for life or imprisonment for 10-years.

8. Due to the foregoing reason, the offences are categorized as falling into non-prohibitory and prohibitory clause for the grant of bail under Section 497 Cr.P.C. Needless to mention here that the term non-prohibitory clause stands for the offences punishable with imprisonment of less than 10-years. According to the law of bail evolved over the years through the pronouncements of judgments by the superior Courts, the grant of bail in offences punishable with imprisonment of less than 10-years is rule and refusal is an exception. However, in the present case, *prima-facie*, the charges against the applicant are serious in nature, coupled with the document i.e. *Iqrarnama* and indemnity bond, including three cheques, which were later on dishonored. The property files as discussed supra were verified and found fake, and the complainant was kept on false hopes; besides two FIRs have already been registered against the applicant, however, the same were compromised.

9. Coming to the allegations of three cheques, which were later on dishonored, a question as to what constitutes an offense under Section 489-F, P.P.C. primarily, 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 the cheque in question is dishonored on presentation. *Prima-facie*, in the present case allegations are almost same, therefore, tentative assessment of record explicitly shows that the complainant has been defrauded by the applicant for the reasons discussed supra.

10. The learned trial Court has based on its findings on the analogy that:

“I have considered the arguments advanced by learned counsel for the Applicants/accused, learned counsel for the complainant as well as learned ADPP for the State. I have also made tentative assessment of the material available on record. Perusal of record shows that the Applicant/accused Muhammad Tariq s/o Habibullah has been specifically nominated in the FIR with specific role that he along with co-accused, namely Abdul Wahid Soni gave fake property files of 04 plots situated in Gulshan-e-kaneez Fatima co-operative housing society Surjani town (plot No. 3 and 4 of block No. 11 and plot No. 1 and 10 of block No.9) to the Complainant, his son and wife and received huge amount on account of file transfer, NOC and tax, but on verification it was revealed that files are fake. After several demands of money both the accused executed the indemnity bond and co-accused namely, Abdul Wahid @ Soni issued 3 cheques, bearing No. 30835816, 30835815 and 30835814 of total Rs.48,00,000 (Rupee Forty-

eight lac) in favour of the complainant, which were dishonored on its presentation before the Bank. During investigation the verification was called from Gulsha-e-Kaneez Fatima, K.M.C United Workers Co-operative housing society Ltd, Karachi which also confirmed that property files found fake and bogus. Hence sufficient material is available on record which connects the applicant/accused with the instant case. Furthermore, it is also matter of record that FIR was registered after a delay, however, delay in lodging FIR is not fatal in the above circumstance as the instant alleged incident is based on documentary proof. Delay in lodging of the FIR in such cases like in hand occurred as the applicant/accused had engaged complainant at false/hollow hopes of payment.

Furthermore, it has been consistent view of the apex courts that bail is the discretionary relief and bail in non-bailable offence where proviso under section 497(ii) Cr.P.C, it has been held that no one can claim bail as of right in non-bailable offences even though same do not fall within prohibitory clause of section 497 (1) Cr.P.C. The principle was enunciated by the Honourable Supreme Court of Pakistan in case of Muhammad Siddique V/s. Intiaz Begum & Others (2002 S.C.M.R 442).

It is settled principle of law that while deciding bail application, tentative assessment is to be made, deeper appreciation of evidence is not permissible at bail stage. Prima facie, such material is available on record to connect the applicant/accused with the commission of alleged offence. Consequently, bail application is dismissed.

The observation made above are tentative nature and shall not affect the case of either party at trial.”

11. In view of the above, this Bail Application is dismissed. However, the learned trial Court is directed to record the statement of the complainant within one month and thereafter the applicant would be at liberty to move fresh Bail Application on fresh ground, if any.

12. The observation recorded hereinabove is tentative in nature and shall not prejudice the case of either party in the trial.

JUDGE