

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1838 of 2021**

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<i>Date</i>	<i>Order with signature of Judge</i>
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1. For orders on office objection.
2. For hearing of Bail Application.

**17.01.2022**

Mr. Muhammad Rafi Kamboh, Advocate a/w Applicant (on bail).  
Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh.  
Mr. Waqar Alam Abbasi, Advocate for the Complainant.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicant Javaria Haleem seeks her admission on pre-arrest bail in Crime No.373/2021 of Police Station Mehmoodabad, Karachi, under Section 489-F PPC. The case after thorough investigation has been challaned by the police which is now pending for trial before the Court of 11<sup>th</sup> Judicial Magistrate, Karachi (South) vide Criminal Case No.Nil (re-the State Versus Javaria Haleem). The applicant preferred her anticipatory bail before the Court of Sessions wherefrom it was assigned to 1<sup>st</sup> Addl. Sessions Judge, Karachi (South) vide Criminal Bail Application No.3233/2021 (re-Javaria Haleem Versus The State), who after hearing the parties, has turned down her request through order dated 27.09.2021; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that the applicant being illiterate lady, had wrongly been implicated by the complainant in this case as her cheques were stolen away, therefore, she filed N.C report with P.S Kharadar, Karachi on 25.01.2019. Copy of such report is annexed as (Annexure-F available at page-79 of the Court file). He further submits that per prosecution case, the alleged cheque was bounced on 15.03.2019 even the complainant remained mum for a noticeable period and got registered instant case against her on 17.09.2021 i.e.

with delay of about two and half years for which no plausible explanation has been furnished. Learned counsel submits that complainant has not come with clean hands as prior to registration of instant FIR, applicant has filed Civil Suit before the Court of 7<sup>th</sup> Senior Civil Judge, Karachi (East) vide Suit No.947/2021 (re-Javaria Haleem Versus Mst. Neelam Fatima and others) in which present complainant has been shown as defendant No.3, therefore, malafide on the part of prosecution is evident and the applicant is entitled for anticipatory bail. Learned counsel urges that the cheque in question has also been mentioned under Civil Suit and its cancellation has also been sought. He further submits that the amount in question is not huge one and the applicant being lady, her case falls within the ambit of sub-section 2 to section 497 Cr.P.C, therefore, she deserves for anticipatory bail. In support of his contention, he places reliance upon cases of (i) *MUHAMMAD SULEMAN Versus The STATE* (2013 P.Cr.L.J 1051), (ii) *SHAHID HUSSAIN Versus PREM KUMAR and 2 others* (2015 YLR 691), (iii) *Shaikh MUHAMMAD AAMIR and another Versus GOVERNMENT OF SINDH through Home Secretary and 4 others* (PLD 2013 Sindh 488), (iv) *Mst. RAZIA BEGUM Versus THE STATE* (2009 YLR 87) (v) *MUHAMMAD AYOOB and another Versus The STATE* (2020 P.Cr.L.J 984), (vi) *MUHAMMAD JUMAN JUMANI Versus The STATE* (2020 MLD 1729), (vii) *BASHARAT MASIH Versus THE STATE* (2007 YLR 3267), (viii) *NAZAR MUHAMMAD and 2 others Versus THE STATE* (2012 P.Cr.L.J 430), (ix) *MUHAMMAD ASHRAF Versus The STATE and others* (2015 P.Cr.L.J 1050) (x) *MUHAMMAD ARSLAN Versus THE STATE and another* (2010 P.Cr.L.J 875), (xi) *IFTIKHAR AKBAR Versus THE STATE* (2008 MLD 159), (xii) *MUHAMMAD ASIM SIDDIQUI Versus THE STATE* (2007 MLD 1234), (xiii) *ALI MURTAZA Versus THE STATE* (2005 P.Cr.L.J 1773) (xiv) *MUHAMMAD ASHRAF Versus THE STATE and another* (2014 P.Cr.L.J 1373) (xv) *MUHAMMAD FAYYAZ and 2 others Versus THE STATE and another* (2010 P.Cr.L.J 746), (xvi) *JAMES SARDAR and another Versus THE STATE* (1996 P.Cr.L.J 1422), (xvii) *MUHAMMAD ASHRAF CHOUDHRY Versus The STATE and others* (2014 YLR 1171), (xviii) *MUHAMMAD ASLAM Versus THE STATE* (2007 YLR 1879) (xix) *ABID HUSSAIN Versus The STATE and another* (2013 MLD 897), (xx) *ZAMAN KHAN Versus THE STATE* (2008 MLD 417), (xxi) *IMTIAZ ALI alias BHOLA Versus The STATE and another* (2014 P.Cr.L.J 424), (xxii) *MAZHAR ALI and another Versus The STATE* (2013 YLR 1392), (xxiii) *ALI SHER Versus THE STATE* (2005 MLD 535), (xxiv) *Mian ALLAH DITTA Versus THE STATE and others* (2013 SCMR 51).

4. On the other hand, learned Addl. P.G, Sindh, appearing for the State, opposes the bail application on the ground that huge amount is involved in this case and applicant seems to be habitual offender and has cheated so many people; besides, she has not joined the investigation. He, therefore, opposes the bail application.

5. Learned counsel for the complainant, while adopting arguments advanced by learned Addl. P.G, Sindh, opposes the bail application and submits that Summary Suit has also been filed by the complainant in which she (present

applicant) is not appearing. As far as, Civil Suit filed by the applicant is concerned, learned counsel for the complainant submits that complainant has appeared before the Court and filed his written statement. He; however, admits that Suit filed by the applicant is prior to registration of instant case/FIR.

6. **Heard arguments and perused record.** Admittedly, the cheque in question was returned by the Bank duly dishonoured on 15.03.2019; however, the complainant lodged FIR against her on 07.09.2021 with delay of more than two and half years for which no plausible explanation has been furnished. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution and in this case there is inordinate delay on the part of prosecution for which no plausible explanation has been furnished. The plea taken by counsel for the complainant as well as learned Addl. P.G, Sindh that complainant remained on false hopes being extended by the applicant, therefore, he could not appear before the P.S for getting his case registered, is concerned, same carries no weight as no tangible evidence has been brought on record to believe that applicant has kept complainant on false hopes which caused delay in lodgment of the FIR. Moreover, the applicant has filed Civil Suit against the complainant and others which is prior to registration of this case and malafide on the part of prosecution has been established. In my view, basic ingredients for grant of extraordinary relief, as enshrined by the Hon'ble Supreme Court of Pakistan in case of *Rana MUHAMMAD ARSHAD Versus MUHAMMAD RAFIQUE and another (PLD 2009 SC 427)*, are fully attracted and satisfied. The offence with which applicant stands charged, is triable by the Court of Magistrate where after recording evidence of the parties if prosecution may succeed to prove its charge against her even then the punishment of more than 3 years cannot be visualized. In such like situation, bail becomes right and refusal will be an exception. Reliance can be placed upon the case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*. Entire evidence of the prosecution is in shape of documents which are in custody of prosecution itself and the applicant being lady, question of her absconding or tampering with prosecution evidence, does not arise.

7. Accordingly and in view of above, I am of the opinion that applicant has made out a good prima facie case for her admission on pre-arrest bail within the meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Javaria Haleem daughter of Muhammad Haleem** on 29.09.2021 is hereby confirmed on same terms and conditions.

8. Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

9. Applicant present before the Court is directed to continue her appearance before the trial Court without negligence and in case she may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against her as well to her surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

10. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

***JUDGE***

Zulfiqar/P.A