

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-937 of 2021

Applicant : Imdad Ali Son of Muhammad Haroon Mallah, through Mrs. Razia Ali Zaman Patoli, Advocate.

Respondent : The State through Ms. Safa Hisbani, Assistant Prosecutor General, Sindh.

Complainant : Riaz Hussain Son of Meer Hassan through Mr. Muhammad Hashim Laghari.

Date of hearing : **04.11.2021**

Date of Order : **04.11.2021**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicant/accused above named seeks his pre-arrest bail in Crime No.201 of 2021, under section 489-F P.P.C, registered at P.S Sakrand, after his bail plea was declined by the learned 3rd Additional Sessions Judge, Shaheed Benazirabad, vide order dated 12.10.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicant/accused is innocent having not committed the alleged offence; that there is unexplained and inordinate delay of 20 days in lodging of FIR: that the FIR is based on filing of application u/s 22-A (6) Cr.P.C. but the alleged basic transaction was shown to have taken place in the year 2021 in the memo of application while in FIR the year of alleged transaction has been malafidely converted into 2019, hence the case requires further inquiry; that the complainant did not mention date, time & place of alleged so called transaction, hence case requires further inquiry; that the complainant is employee of PSO and executed an agreement dated 08-12-2016 with applicant/accused and his brother, being owner of Imdad Petroleum Services, & obtained blank signed cheques bearing No.7246387, No.51307957, 51307958 & 51307959 of his account No.001000543434 as surety; that the alleged receipt of so called basic transaction does not bear signature of applicant/accused at the end of receipt though there is proper column/place for signature of purchaser, hence the case requires further enquiry; that actually the complainant party is bent upon to usurp the property of

applicant party on which the applicant, being attorney of co-sharers, filed Revenue Appeal which was allowed by the Additional Deputy Commissioner-I/Collector, Dist: SBA, due to such annoyance complainant in collusion with his brother Mehar Magsi lodged present false & fabricated FIR; that the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. She lastly prayed for confirmation of interim pre-arrest bail.

4. On the other hand, learned counsel for the complainant submits that there is documentary evidence available against the applicant/accused and he is habitual as he has also cheated another person such F.I.R being Crime No.213 of 2021 under section 489-F P.P.C registered at P.S. Sakrand also registered against him. He lastly prayed for dismissal of interim pre-arrest bail.

5. I have heard learned counsel for the applicant as well as counsel for the complainant and Assistant Prosecutor General, Sindh having also gone through the material available on record.

6. From perusal of record it reflects that the applicant/accused has purchased Grandee Model 2019 white color vehicle registration No.BQH-535 in sum of Rs.40,00,000/- out of which he has paid an amount of Rs.10,00,000/- as an advance and for remaining amount he has given a Cheque bearing No.7246387 of his account No.013801010016910 of MCB Limited Sakrand Branch dated 30.08.2021. On presentation of said cheque same was dishonoured with return memo of insufficient funds, hence ingredients of section 489-F P.P.C are very much applicable in this case. Further when the said cheque was presented before concerned bank the same was dishonoured which shows the applicant/accuse had no intention to repay the amount to the complainant. The prosecution witnesses supported the version of the complainant in their 161 Cr.P.C statements. The applicant/accused has not been able to point out, even obliquely to any transaction in respect of vehicle allegedly purchased by him and purportedly given cheque to someone else as surety, as such, consequences of failure the learned counsel also fails to point out any mala fide or animosity against the complainant which is requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law reported as *Syed HASNAIN HAIDER Vs. The STATE and another [2021 SCMR 1466]*. It is well settled principle of law that the deeper appreciation of evidence is not

permissible at the bail stage and only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicant with the alleged offence.

7. In view of above discussion, the applicant/accused has failed to make out a good case for confirmation of interim pre-arrest bail. Consequently, the bail application is dismissed and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 18.10.2021 is hereby re-called.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE

*Muhammad Danish**