

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.74 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

03.02.2022

Ms. Farzana Qadir, Advocate for the Applicant.

Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh along with HC Khan Muhammad of P.S Kalakot, Karachi.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Muhammad seeks his release on post arrest bail in Crime No.471/2021 of P.S Kalakot, Karachi, under Section 489-B PP.C. The applicant preferred his bail plea before the trial Court, which was turned down by means of order dated 12.01.2022; hence, he has approached to this Court through this Application.

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

3. Learned counsel for the applicant submits that the case against applicant is false and fabricated as it has not been shown by the prosecution whether the applicant was buying or selling currency notes even he was not found trafficking the same; hence, according to her, provisions of Section 489-B PPC are not applicable in this case. She, therefore, submits that applicant may be enlarged on bail. In support of her contention, she places reliance upon the case of *GHULAM DASTAGIR Versus THE STATE (2005 P.Cr.L.J 405)*.

4. On the other hand, learned Assistant P.G, Sindh appearing for the State, opposes the bail application on the ground that currency notes have been shown to have been recovered from his exclusive possession and the offence with which he stands charged, carries maximum punishment; hence, he is not entitled for bail. He, therefore, opposes the bail application.

5. **Heard arguments, record perused.** The perusal of FIR reveals that accused/applicant, at the time of his arrest, was neither exchanging nor buying or selling currency notes even it is not mentioned whether the applicant was trafficking or using currency notes as genuine. The prosecution has not collected the evidence whether applicant was in knowledge that the notes allegedly recovered from him were fake one or counterfeit.

6. Before parting with the order, it will be appropriate to reproduce Section 489-B PPC which reads as under;_

“489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. In instant case, contents of the FIR viz-a-viz. accusation against applicant does not tally with the contents of Section 489-B PPC and I observe that if contents of the FIR presumed to be true, prima facie provisions of section 489-C PPC are attracted as no specific allegation has been leveled by the prosecution against applicant for using alleged forged currency notes as genuine. Hence, it is yet to be determined by the trial Court whether provisions of Section 489-B PPC or 489-C PPC are attracted in this case, of course, it could be thrashed out after recording evidence of the prosecution witnesses. In the circumstances, I am forfeited with dicta laid down by the Hon'ble Supreme Court of Pakistan in case of SAMI ULLAH Versus The STATE (2021 SCMR 729), whereby the Apex Court has held as under;_

“2. After hearing the learned counsel for the petitioner and learned counsel appearing on behalf of State at length and perusal of available record with their assistance, it has been observed by us that as per contents of FIR, allegation against the petitioner is that at the time of his arrest, forged Pakistani currency notes of 1000 denomination were recovered from his possession. Even from the contents of FIR, prima facie the provisions of section 489-C, P.P.C. are attracted in this case as there

is no allegation against the petitioner of using as genuine forged or counterfeit currency notes allegedly recovered from him. Nevertheless, it is for the learned trial Court to determine finally whether provisions of sections 489-B or 489-C, P.P.C. are attracted in this case, of course, after recording evidence. As of now, case against the petitioner calls for further enquiry falling within the ambit of section 497(2), Code of Criminal Procedure."

8. In the light of above legal position, I am of the opinion that case against applicant is covered by sub-section 2 to section 497 Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed. Applicant **Muhammad son of Muhammad Ramzan**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.200,000/- (Rupees Two Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

9. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

10. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A