

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 167 of 2021

Date

Order with signature of Judge

1. For orders on office objection as at A
2. For hearing of bail application

Date of hearing: 31st March 2021.

Date of order: 31st March 2021.

Mr. Zulfiqar Ali Sheikh, advocate for applicant/accused

Mr. Siraj Ali Khan Chandio, Additional Prosecutor General Sindh

Mr. Noor Marjan Khattak, advocate for complainant

Salahuddin Panhwar, J.- Interim pre arrest bail was granted to the applicant in Crime No. 387/2020 registered at P.S Bilal Colony, Karachi, for offences under Sections 406/420/489-F PPC on 29.1.2021, on date of hearing aforesaid matter came up for confirmation or otherwise when after hearing the parties, interim pre arrest bail was recalled, following are reasons thereof.

2. Precisely relevant facts are that the complainant lodged FIR wherein it is alleged that he and his other relatives purchased five cars from the showroom of accused and gave the cars to the accused on monthly rent basis, who gave two cheques to complainant. One cheque bearing No.10085021 amounting to Rs.600,000/- of Bank Al-Habib Limited, 4K Chowrangi Branch, Karachi, upon presentation dishonored, thereafter, complainant approached accused to return the said cars as well as to pay outstanding rent, but the accused avoided and disappeared, hence the complainant lodged the aforesaid FIR against him.

3. Applicant/accused approached learned trial Court for grant of pre-arrest bail, but the same was declined vide order dated 16.12.2020, hence he has approached this Court for the same relief.

4. Learned counsel for the applicant/accused contended that applicant is innocent and has been falsely implicated in the present case; that the said cheque was issued as a guarantee; that there is business relationship between the parties, hence, the dispute is of civil nature, but the complainant has malafidely lodged the FIR against the

applicant with mala fide intention just to achieve his own ill designs; that the applicant is a respectable person and his arrest will cause humiliation in the society. He, therefore, prayed that interim pre-arrest bail already granted to the applicant may be confirmed.

5. In contra, learned Additional Prosecutor General Sindh duly assisted by learned counsel for the complainant contended that complainant and his other family members purchased 05 vehicles, which were given to the applicant on monthly rent, but the applicant neither paid rent nor returned back the vehicles; that two cheques were given by the applicant, out of which one cheque was deposited but the same was dishonored due to close of account; that applicant is habitual of committing such like offences; that the cheques given by the applicant before this Court were also dishonored on presentation, therefore, the applicant is not entitled for grant of pre-arrest bail.

6. Heard and perused the record.

7. According to prosecution case, applicant issued cheques to complainant and when complainant presented the said cheque before the Bank for encashment, it was dishonored due to close of account. Applicant has not denied the issuance of cheque to the complainant rather he accepted, thus there was prima facie the element of dishonesty on the part of the applicant, who knowingly very well that the account was closed issued the said cheque, therefore, in my humble opinion, the provisions of section 489-F, P.P.C are squarely attracted in the present case. With regard to the argument of learned counsel for the applicant that it is a case of civil nature, it is observed that the complainant cannot be bound down to seek his remedy by approaching the civil court through a recovery suit when there is no legal embargo on him not to press into service the penal provisions against the delinquent through the registration of an FIR. There is no material on the file which could remotely suggest and indicate that the matter is out of the ambit of section 489-F, P.P.C and is of a civil nature.

8. It is matter of record that applicant approached this court through Criminal Bail Application No. 1846 of 2020, wherein ad-interim pre-arrest bail was granted to applicant. On the date of hearing viz. 14th January 2021, applicant undertook to return two vehicles within a week but on 25.01.2021 such bail was not pressed. Such facts are concealed by the

applicant in present bail application. This ground alone is sufficient to refuse instant bail application.

9. It is further noted that on 05.03.2021, while hearing instant bail application, the applicant gave eight cheques to complainant in Court to settle the amount and the matter was adjourned to 31.03.2021. On 31.03.2021, the counsel for the complainant informed the Court that the said cheques were also dishonored on presentation. Even in the memo of bail application, the applicant himself mentioned that he is involved in another alike FIR. Such conduct on the part of the applicant suggests that he is habitual in issuing bogus cheques.

10. It is well settled that grant of pre-arrest bail is an extra-ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a 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 criminal case as it seriously hampers the course of investigation. Reliance is placed upon the cases reported as **Rana Abdul Khaliq vs. The State (2019 SCMR 1129)**. In the present case the essential requirement for grant of pre-arrest bail i.e. mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens are conspicuously missing.

11 For the foregoing reasons, the applicant has failed to make out a case for grant of pre-arrest bail. Consequently, the instant bail application is dismissed.

12. The observations made hereinabove are of tentative nature and the learned trial Court will not influence with the same while deciding the case on its own merits.

JUDGE