

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 526 Of 2021

Shafiq Ahmed Vs. The State

Mr. Dilber Aijaz, Advocate for applicant.
Mr. Muntazir Ali Mehdi Addl.P.G. a/w
SI Rana Muhammad Zahoor, PS Defence, Karachi.

Date of Hg: 28.04.2021
Date of Order: 28.04.2021

ARSHAD HUSSAIN KHAN, J: The applicant/accused namely, Shafiq Ahmed son of Sher Muhammad, through instant bail application has sought post-arrest bail in the case bearing F.I.R. No.478/2018, registered under Sections 489-F/420/34 PPC, at Police Station Defence, Karachi.

2. Briefly, the facts of the prosecution case are that on 15.12.2018, complainant Faisal Afzal Khan lodged FIR stating therein that he is an advocate and in the year 2016, accused Shafiq Ahmed son of not known along with his father and brother came at his residence and received Rs.20,00,000/- from him and promised to pay 60% profit on the said amount. Thereafter accused paid profit to him for about 1 ½ years. However, subsequently they stopped payment of the profit. Thereafter, pursuant to an agreement between the complainant and the accused, the latter has given him a cheque of Rs.15,00,000/- vide cheque No.20417586 dated 31.01.2018 drawn on UBL, Lahore Branch Punjab. On 01.10.2018, the complainant deposited said cheque in his bank account in Bank Al-Habib Branch Phase-I, for encashment, however, due to shortage of funds the same was dishonoured upon which he lodged the FIR.

3. Learned counsel for the applicant/accused while reiterating the contents of bail application has contended that the applicant/accused is innocent and has falsely been implicated in the case by the complainant with malafide intentions and ulterior motives. He further contended that there is an inordinate delay in lodging of the FIR, which has not been explained. He further contended that the cheque was given as guarantee towards the invested amount and as such it was not issued for repayment of any loan or fulfillment of any financial obligation. It is

further contended that Section 420 PPC is bailable whereas Section 489-F PPC does not fall within the ambit of Section 497(1) Cr.P.C. He further urged that the investigation has been completed and the applicant/accused is no more required for any investigation. Learned counsel further argued that the entire case is based upon documentary evidence, which too is already with Prosecution and as such in the event the applicant/accused is released on bail no chance of tampering with evidence will arise.

4. Learned Addl.P.G. for the State has vehemently opposed the bail application on the ground that the accused has issued a cheque to the complainant, which has been dishonoured and as such he is not entitled to the concession of bail. Notice of this bail application has also been issued to the complainant but there is no representation on his behalf.

5. I have heard the learned counsel for the applicant/accused, learned Assistant Prosecutor General, Sindh, for the State and have also gone through the material available on the record.

6. From perusal of the FIR, it appears that the cheque having date of 31.10.2018 was issued by the applicant/accused. Whereas complaint deposited the said cheque in his bank account on 01.10.2018, prior to the date mentioned on the cheque, which upon deposit was dishonoured. When the question regarding deposit of cheque prior to the date mentioned in the said cheque, was confronted with learned Addl. PG, he has submitted that perhaps this is a typographical error. However, dates of cheque and deposit as reflected in the FIR is also mentioned in the Challan. There is nothing available on the record, which could show that the complainant filed any application for rectification of said error. This fact alone makes the case of the applicant/accused one for the further inquiry.

7. The record shows that the applicant/accused is not previous convict nor a hardened criminal. Moreover, the applicant has been in continuous custody since his arrest and is no more required for the purpose of any investigation nor the Prosecution has claimed any exceptional circumstance, which could justify keeping the applicant/accused behind the bars for an indefinite period pending determination of his guilt. Further the amount involved in a case registered under Section 489-F, P.P.C. cannot be treated as an

exception of the general rule that in such cases bail shall be considered favourably. Even otherwise, Section 489-F of P.P.C. is not a provision, which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act, and award a sentence, fine or both as provided under Section 489-F, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. It is also imperative to note that the offence does not fall within the prohibitory clause of subsection (1) of Section 497, Cr.P.C.

8. Moreover, in the light of principles and law laid down by the Honourable Supreme Court in cases where offences fall within non-prohibitory clause of Section 497, Cr.P.C., granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Reliance can be placed on the case of Zafar Iqbal v. Muhammad Anwar and others [2009 SCMR 1488] and Further keeping in view the peculiar facts and circumstances of the case, I am of the opinion that prima facie, applicant/accused has succeeded to bring his case within the purview of further inquiry under subsection (2) of Section 497, Cr.P.C. and for this reason, he was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R. bond in the like amount to the satisfaction of the trial court, by my short order dated 28.4.2021.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

Above are the reasons of my short order dated 28.04.2021

JUDGE