

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.489 of 2021

Applicant : Javed Hussain son of Ameer Bux  
bycaste Korai, Resident of village  
Muhammad Bux Korai, Taluka Dour,  
District Shaheed Benazirabad (SBA).

Complainant : Sikander Ali son of Taj Muhammad  
Lashari, in person.

The State Through Mr. Shafi Muhammad  
Mahar, Deputy Prosecutor General,  
Sindh.

Date of hearing : 27-08-2021  
Date of order : 27-08-2021

### **ORDER**

**AMJAD ALI SAHITO, J** --Through this CrI. Bail Application, the applicant/accused seeks pre-arrest bail in Crime No.93/2021, u/s 489-F PPC registered at police Station Faiz Ganj after his bail plea has been declined by Additional Sessions Judge, Mirwah vide order 03-08-2021.

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

3. The instant CrI. Bail Application was filed on 06-08-2021 and on the very same day, the interim bail was granted to the applicant and the matter was adjourned for today i.e 27-08-2021, but today learned counsel for the applicant is called absent and Mr. Ahmed Mehran Goraya advocate holds brief on behalf of Mr. Saeed Jamal Lund advocate for the applicant states that latter is out of station. The applicant is present and he is directed to argued the matter himself as the complainant Sikander Ali Lashari raised objection on the ground that he has travelled from Akri Choudgi, Taluka Faiz

Ganj, which is far away from the Sukkar, hence he requests that applicant may be directed to proceed with his case. Learned DPG for the State has read over the FIR. The applicant states that he has not issued the cheque to the complainant, but the same has been manipulated. He further contends that prior to this he has issued a blank cheque to the complainant, but he has misused the same.

4. Learned DPG for the State as well as complainant have opposed the grant of bail to the applicant on the ground that applicant has purchased the trolley of tractor from the complainant and paid Rs.50,000/- as an advance and for the remaining amount, he issued a cheque of HBL Bank, which its presentation was dishonoured due to insufficient balance.

5. I have heard the applicant, learned DPG for the State, complainant and have gone through the material available on record.

6. The perusal of FIR shows that applicant has purchased the trolley of tractor from the complainant in the sum of Rs. 275,000/-, out of which, Rs.50,000/- were paid by the applicant to him and for remaining amount Rs. 225000/- he has issued a cheque bearing No. 00000136 dated 10-03-2021 of HBL Nawabshah Branch and such agreement was reduced in writing. On due date, the complainant has produced the said cheque, but the same was dishonoured due to insufficient balance. The complainant is present and shown such original agreement and original cheque, which shows that the applicant has no intention to pay the remaining amount of trolley of tractor to the complainant and has allegedly committed cheating with him, hence the ingredients of section 489-F PPC are very much available. The PWs have also supported the version of the complainant in the statements u/s 161 Cr.P.C. No enmity, or ill will has been pointed by the applicant against the complainant to falsely involve him in this case. Prima-facie, the sufficient material is

available on record to connect the applicant/accused with the commission of the alleged offence.

7. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant 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 the investigation.

8. In view of the above, the applicant/accused has failed to make out a case for grant of post-arrest bail. Resultantly, the instant Crl. Bail Application merits no consideration, which is dismissed accordingly and interim order already granted to the applicant/accused is hereby recalled.

9. 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 applicants on merits.

JUDGE

Nasim/PA