

ORDER SHEET

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

Cr. B. A. No. S – 655 of 2020.

DATE

ORDER WITH SIGNATURE OF JUDGE

24.08.2020.

FOR HEARING OF MAIN CASE.

Applicant is present on interim pre-arrest bail.

Mr. Amjad Hussain Shar Advocate for the applicant.

Mr. Akhtar Hussain Leghari Advocate along with the complainant.

Mr. Shahid Ahmed Shaikh, D.P.G. for the State.

NAIMATULLAH PHULPOTO, J.

Applicant/accused Rafique

Ahmed alias Muhammad Rafique son of Muhammad Jumman seeks pre-arrest bail in Crime No.10 of 2020, registered at Police Station Sultanabad, for offences under section 489-F PPC.

2. Previously, applicant/accused applied for the same relief before learned Ist-Additional Sessions Judge, Tando Allahyar, the same was refused by him vide order dated 07.07.2020. Thereafter, applicant has approached to this Court.

3. Brief facts of the prosecution case as disclosed by complainant Mehfooz Ali Khan in the FIR are that he owns 5 ½ acres agricultural land in Deh Mehmoodani where he has grown the banana crops. It is further stated that he had sold bananas of Rs.600,000/- to the applicant and he issued the cheque on 18.07.2019. It was presented before the Manager of Allied Bank and it was dishonored. Thereafter, aforesaid FIR was lodged. After usual investigation challan has been submitted against accused under section 489-F PPC.

4. Learned Advocate for applicant/accused has mainly contended that there was delay in lodging of FIR for which no plausible explanation has been furnished; that no document regarding business transaction has been produced by the complainant before the Investigation Officer that cheque was issued by the applicant/accused to third person not to the

complainant in this case. He prayed for grant of pre-arrest bail to the applicant/accused.

5. Mr. Shahid Ahmed Shaikh, D.P.G. assisted by learned Advocate for the complainant argued that admittedly cheque in question has been issued by the applicant/accused which was dishonored, that regarding the business transaction it is mentioned in the FIR that complainant had sold bananas to the applicant/accused and he issued the cheque. It is submitted that ingredients for grant of pre-arrest bail are not satisfied in this case and prayer for grant of pre-arrest bail has been opposed.

6. I have carefully heard the learned counsel for the parties and perused the relevant record. The applicant/accused is present in the Court. He has been shown the cheque in question. Applicant admits his signature but states that it was not issued by him in the favour of the complainant. Cheque in question is available on the record which, clearly shows that it was issued by the applicant/accused in the favour of complainant Mehfooz Ali. So far malafide or ulterior motive is concerned, learned Advocate for applicant/accused couldn't point out any malafide on the part of the complainant as well as police. Other contentions raised by learned Advocate for the applicant/accused require deeper appreciation of evidence which is not permissible at this stage. Law is very settled for grant of pre-arrest bail essentially required considerations of malafide, ulterior motive or abuse of process of law as has been held by Honourable Supreme Court in the recent Judgment in case of **Rana ABDUL KHALIQUE v. THE STATE and another** reported in 2019 S.C.M.R 1129 which are reproduced as under:-

“Impugned herein is order dated 5.3.2019, whereby a learned Judge-in-Chamber of Lahore High Court admitted Muhammad Akram, respondent to bail in anticipation to his arrest; upon failure of a bank cheque issued by him towards re-payment of loan, he was required in a criminal case registered under section 489-F of Pakistan Penal Code, 1860, The learned High Court confirmed ad interim bail on the ground that respondent did not 'misuse' ad interim bail and that he was going to be released on post arrest bail if at all, remitted into custody. The learned Judge in order to substantiate his point of view, referred to the case of Khalil Ahmed Soomro and others v. The State (PLD 2017 SC 730).

2. 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 a petitioner 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. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least."

7. In the present case considerations of malafide, ulterior motive or abuse of process of law are conspicuously missing.

8. For the above stated reasons, no case for grant of pre-arrest bail is made out. Accordingly, order dated 14.07.2020, whereby the applicant/accused was admitted to interim pre-arrest bail is hereby recalled and instant bail application is dismissed. However, learned trial Court is directed to conclude the trial within a period of three (03) months from the date of receipt of this order.

9. Needless to mention that observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

A.