

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 214 of 2022

Applicant : Mushtaque Maseh s/o Allah Rakha, through
Mr. Meer Ahmed Mangrio, advocate

Respondent : The State, through Mr. Faheem Hussain
Panhwar, D.P.G.

Complainant : Muhammad Nabi s/o. Eid Muhammad,
through Mr. Imran Akmal, advocate

Date of hearing : 26.04.2022

Date of order : 26.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Mushtaque Maseh s/o Allah Rakha, through instant Cr. Bail Application, seeks pre-arrest bail in Crime No. 1437 of 2021 registered under section 489-F, P.P.C. at P.S. Shahrah-e-Faisal, Karachi. His earlier application for the same relief bearing No. 6423/2021 was dismissed by the learned Addl. Sessions Judge-IV, Karachi-East vide order, dated 21.01.2022. He was admitted to interim pre-arrest bail by this Court vide order, dated 01.02.2022, now the matter is fixed for confirmation of the same or otherwise.

2. It is alleged that, on 02.08.2021, the applicant issued a cheque to the complainant, amounting to Rs. 6,00,000/- to repay his liabilities in respect of articles purchased by him from the complainant, which was dishonored by the bank on being presented.

3. Heard and record perused.

4. As per F.I.R., the complainant deals in electronics, who delivered one 125 motorcycle and other articles for the marriage of the applicant's daughter, who paid an amount of Rs.60,000/- as advance and for the balance amount issued the alleged cheque. It is case of the complainant that he provides articles on installment basis from whom the applicant obtained some articles and paid advance amount as well as some installments. Contrary to the case of the

complainant, it is stance of the applicant that he lodged F.I.R. No. 130/ 2020 against Abdul Ghaffar Khan, (*the father-in-law of the complainant*) under section 18, 20 of the Money Lending Ordinance, 1960 at P.S. Kotri and the instant F.I.R. is counter-blast of the said F.I.R. The applicant denies the allegation against him on the ground that the alleged cheque was given to Abdul Ghaffar Pathan as security, which fact is mentioned in the said F.I.R. lodged by him, and the same has been misused by the complainant. It is also an admitted position that the alleged motor-cycle is still on the name of Abdul Ghaffar Khan's son. Hence, it is yet to be determined at trial if the applicant issued the alleged cheque to complainant towards fulfillment of his any obligation. The offence under section 489-F, P.P.C. is though non-bailable but does not fall within the prohibitory clause of section 497, Cr.P.C. Prima facie, section 489-F, 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 of a sentence, fine or both as provided under section 489-F, P.P.C. The law is very liberal especially when it is salutary principle of law that in the offences which do not fall within prohibitory clause, the grant of bail is a rule while its refusal is merely an exception. Accordingly, the interim bail already granted to the applicant is confirmed on same terms and conditions.

5. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law

Cr. Bail Application stands disposed of.

JUDGE

Athar Zai