

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 1735 of 2017.

Date Order with signature of Judge

For hearing of bail Application.

13.02.2018

Mr. Mehboob Lakhani, Advocate for Applicant.
Ms. Rahat Ehsan, Deputy P.G. Sindh.

Through instant bail application, applicant seeks post arrest bail in FIR No. 164/2017, under Section 489-F/34 PPC registered at P.S. Mithadar.

2. The facts giving rise to this bail application, briefly stated, are that there was business dealing between the applicant and complainant, who had given amount to the applicant for investment in business and when the complainant demanded his amount back, the applicant given him a cheque of Rs.10,00,000/- which was presented in the bank, but the same was dishonoured, hence the present case was registered against the applicant.

3. At the outset, learned counsel for the applicant contends that applicant is in prison since ten months and yet trial is pending for adjudication; maximum punishment is three years which is not falling within prohibitory clause. He relies upon the case of Tariq Bashir reported as PLD 1995 SC 34. Moreover, he contends that there was a civil transaction between the accused and complainant and yet it is to be proved that whether this is a case of dishonest conduct of applicant or otherwise.

4. Muhammad Rafiq, who is broker, present in Court contends that applicant purchased hardware and other articles but failed to pay the consideration, however, he admitted that he is not

complainant and seeks time. Whereas, record reflects that on many hearing, complainant was present and sought time. A right of hearing, if appearing to defeat cause of justice by indefinite procrastination would not be entertained. Reference may be made to case, reported as 2016 SCMR 1961. Even otherwise, the State counsel is present.

5. Learned Deputy P.G. Sindh contends that applicant is habitual offender and is not entitled for concession of bail.

6. After careful consideration of contentions raised by learned counsel for the applicant and his rival it is *prima facie* admitted position that the offence is not falling within prohibitory clause of subsection 1 of Section 497 Cr.PC. For this, principle was enunciated as that in such like cases the grant of bail is a *rule* while refusal thereof is an exception. This principle has been stamped in case of Muhammad Tanveer v. State PLD 2017 SC 733 as:

“13. Once the court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497 Cr.PC shall be a rule and refusal shall be an exception then, the courts of the country should follow this principle in letter & spirit because principles of law enunciated by this Court are constitutionally binding on all courts throughout the country including the special Tribunals and Special Courts.

Further, it is settled principle of law that bail cannot be withheld as punishment; applicant is in prison since ten months for committing an offence which provides maximum sentence upto three years; the cheque in question was given against some business transaction hence yet trial Court has to conclude the *mens rea* of accused which makes it a case for further probe least for bail plea. Accordingly, applicant is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/-

(Rupees One Hundred Thousand Only) and P.R. bond in the like amount to the satisfaction of the trial Court.

JUDGE

SAJID