

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1134 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

01.08.2022

Mr. Riaz Ahmed Phulpoto, Advocate for the Applicant.
Mr. Faheem Hussain Panhwar, Deputy Prosecutor General, Sindh.
Mr. Ghulam Nabi Shar, Advocate along with Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Muhammad Zahid seeks his release on post arrest bail in Crime No.194/2022 of P.S Quaidabad, Karachi, under Section 489-F PPC. After registration of the FIR, applicant, as per available record, was arrested on 15.04.2022 and after completion of codal formalities, challan against him has also been filed by the police on 09.05.2022. The case is now pending for trial before the Court of Civil Judge & Judicial Magistrate-IV, Malir Karachi. The applicant preferred his bail application before the trial Court which was declined, therefore, he filed second bail application before the Court of Sessions wherefrom it was assigned to 4th Addl. Sessions Judge, Malir Karachi vide Criminal Bail Application No.2148/2022 (re- Muhammad Zahid versus The State). After hearing the parties, learned Addl. Sessions Judge has also turned down his prayer through order dated 26.05.2022; hence, this bail application has been maintained.

2. The facts of the case as unfolded by the complainant in his FIR are as under;_

“The brief facts of the case as narrated in FIR No.194/2022 of PS Quaidabad, Karachi lodged on 12.04.2022 by Riaz Ahmed son of Fazal Rehman are that on 05.09.2019, on insistence and guarantee of Sajid Imam son of Imam Bux, the complainant executed business agreement with Zahid Imam son of Imam Bux and invested amount into business of net cafe. According to terms of agreement, Zahid Imam was bound to pay Rs.7,00,000/- per month to the complainant, in lieu of profit but since beginning Zahid Imam has not paid amount of profit on various pretexts. Thus, amount of profit became more than rupees five crore and on insistence of complainant, cheque No.91936712 dated 10.09.2021 amounting to Rs.1,05,00,000/- was issued by Zahid Imam. The complainant deposited above mentioned cheque in his bank account of Zahid Imam. The complainant approached Sajid Imam for recovery of

above mentioned amount and thereafter filed petition under section 22-A Cr.P.C in Court of law, obtained order and lodged FIR of the incident. The applicant/accused filed post arrest bail application but the same was dismissed vide order dated: 22.04.2022 passed by IVth Civil Judge & Judicial Magistrate Malir."

3. Learned counsel for the applicant submits that the complainant had entered into an agreement with one Adil Shah and the applicant entered in their transaction as guarantor, hence, the prosecution case is based upon the documents which rest with the complainant/prosecution itself, therefore, it is yet to be determined by the trial Court whether the applicant had borrowed the amount as claimed by the complainant or entered into an agreement as guarantor. He further submits that being guarantor, the complainant had taken a series of cheques from him, hence, he got entered an entry No.27 with P.S Steel Town, Karachi. As far as, second agreement, as produced by counsel for the complainant, is concerned, counsel for the applicant submits that it was executed on 29.10.2019 which shows different amount than the amount in question. He next submits that complainant had not disclosed mode of payment whether he had paid such a huge amount in cash or through any cheque. He further submits that if the documents produced by the applicant as well as adduced by the complainant himself may be considered then the applicant has got a good case for filing civil proceedings and at this juncture, case against applicant, in view of above documents, requires further inquiry. In support of his contention, learned counsel for the applicant places reliance upon cases of *MSHTAQ AHMED Versus The STATE and another (2013 YLR 435)*, *SHAHROOM Versus The STATE through Advocate-General Azad Kashmir (2014 P.Cr.L.J 1327)*, *ZAR NASIB KHAN Versus The STATE through Advocate-General and another (2018 YLR 443)*.

4. On the other hand, learned Deputy P.G, Sindh appearing for the State opposes the bail application on the ground that huge amount is involved in this case and the applicant had also executed an agreement with the complainant which has not been denied in any manner. He further submits that looking to the huge amount, applicant may not be granted bail. Learned Deputy P.G, Sindh; however, does not controvert the fact that the offence with which applicant stands charged, carries maximum punishment up to three years and is being tried by the Court of Judicial Magistrate.

5. Learned counsel for the complainant, by adopting the arguments advanced by learned Deputy P.G, Sindh, also opposes the bail application and submits that huge amount of the complainant has been usurped by the applicant, therefore, he is not entitled for the bail.

6. In terms of directions contained under earlier order, the trial Court / Civil Judge & Judicial Magistrate-IV, Malir Karachi has submitted progress report of the trial which reflects that charge against the applicant was framed on 10.06.2022 and due to vacations as well as departure on leave by Presiding Officer, the trial has not been commenced.

7. **Heard arguments, record perused.** Per FIR, the incident, as shown, had occurred on 02.12.2021 whereas it was reported on 12.04.2022 with the delay of about five months and no plausible explanation has been furnished by the prosecution for such an inordinate delay. The document viz. Agreement dated 29.10.2019 submitted by the complainant today, shows different amount from the amount in question and the complainant has also not disclosed this fact under the FIR whether he had entered into agreement with the applicant or otherwise. Mere issuance of cheque for such a huge amount, which is yet to be thrashed out by way of evidence and is to be determined by the trial Court whether such transaction was effected between the parties as claimed or otherwise, one cannot be kept behind the bars for indefinite period without progress in his trial. The offence with which applicant stands charged, if the prosecution, after recording evidence of the witnesses, may prove its charge against him, even then punishment of more than three years cannot be visualized. The challan of the case has been filed and the applicant is no more required for the purpose of investigation or interrogation. It is well settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. In case of *ZAR NASIB KHAN and another Versus The State through Advocate-General and another* (Supra) learned Bench of Peshawar High Court has observed as under;_

"5. Notwithstanding the fact, that punishment provided for offence under section 489-F, P.P.C. may extended to 3 years or with fine or both but in the present case the parties have executed an agreement deed on 12.08.2015 arising out of the subject matter of dispute of the present FIR, copies of the said agreement have been perused wherein although present petitioner No.1 has accepted certain liabilities for payment of certain amount towards satisfaction of the claim of complainant/respondent and thereafter he failed to fulfill that responsibility. Without dilating upon the merits of the case lest it may prejudice proceedings before the learned courts below, it would be sufficient to hold that the offence does not fall within the prohibitory clause of section 497, Cr.P.C for dishonestly issuing the cheques and it is yet to be seen that the accused-petitioners had any intention to cheat or defraud the complainant/respondent."

8. Reliance can also be placed upon the case of *RIAZ JAFAR NATIQ Versus MUHAMMAD NADEEM DAR and others* (2011 SCMR 1708), whereby Hon'ble

Supreme Court of Pakistan while dealing with identical issue granted bail to the petitioner by holding in following terms;_

“2. Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into an appeal and the same is allowed and, resultantly, the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs. 1,00,000 (Rupees one hundred thousand only) with two sureties each in the like amount to the satisfaction of the learned trial Court.”

9. In instant case, the complainant as well as applicant, as alleged, had entered into agreements which have been made part and parcel of instant case and same are yet to be scrutinized by the trial Court through evidence. Mere issuance of cheque does not constitute an offence under Section 489-F PPC as it is yet to be established by the prosecution through evidence, that the cheque was issued dishonestly discharging of an obligation and with the acknowledgement that the cheque will be dishonoured later on. Unless the prosecution may adduce its evidence before the trial Court and the trial Court may determine accusation against the applicant, I am of the humble view that the case against applicant requires further inquiry within the meaning of subsection 2 to section 497 Cr.P.C.

10. In the circumstances as well as in light of dicta laid down by the Apex Court in cases of *RIAZ JAFFAR NATIQ* (Supra) and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another* (PLD 2017 SC 733), instant bail application is hereby allowed. Applicant **Muhammad Zahid son of Imam Bux**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.10,00,000/- (Rupees One Million Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

11. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE