

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Appln No.1253 of 2021

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

13.12.2021

Mr. Bilal Memon, advocate for the applicant
Ms. Rahat Ahsan, APG

Aftab Ahmed Gorar, J.:- The applicant was admitted to pre-arrest bail vide order dated 01.09.2021 and today the matter is fixed for confirmation of said pre-arrest bail.

2. Learned counsel for the applicant while reiterating the grounds mentioned in the memo of bail application submitted that after obtaining the pre-arrest bail, the applicant is regularly attending the trial court as well as this court and not misused the concession of pre-arrest bail. Learned counsel for applicant further submitted that the applicant is innocent and has falsely been implicated in this case due to enmity by the complainant. He contended that the FIR was registered with inordinate delay of three months for which no plausible explanation was given. Though this is a case registered under section 489-F PPC, however neither the applicant himself issued any cheque to the complainant nor the same was dishonoured due to his fault. He next contended that all these aspects of the matter make the whole story doubtful which requires further enquiry. He prayed that the pre-arrest bail granted to the applicant vide order dated 01.09.2021 may be confirmed.

3. Learned APG Sindh submitted that it is categorically mentioned in the FIR that the loan amount was given to the complainant and for the return of the same the applicant had given the subject cheque dishonestly which was dishonoured consequently this FIR was lodged she therefore, opposed the confirmation of bail to the applicant.

4. I have heard the learned counsel for applicant and learned Additional Prosecutor General Sindh and perused the record.

5. Perusal of the FIR shows that the complainant himself claimed in the FIR that the loan amount was given to the applicant by the complainant and for the return of the same the applicant had given the

subject cheque dishonestly which was dishonoured consequently this FIR was lodged. The complainant has failed to mention the loan amount in the F.I.R. Apart from the other record, the contents of FIR itself makes a case of further inquiry which says that neither the alleged cheque was issued by the applicant nor it relates to his account where the cheque was claimed to have dishonoured. It is claimed that the applicant to satisfy the loan amount has given cheque of his wife's account which was dishonoured. Even if this plea is accepted, even then the liability of applicant is yet to be proved to have issued the cheque against the loan he has obtained. Prima facie, case against applicant appears to be doubtful benefit of which shall go to the applicant. In the case reported as Syed Amanullah Shah v. The State (PLD 1996 SC 241) Hon'ble Supreme Court has held as under:

“So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused”.

6. No complaint of misuse of concession of bail or tempering the record has been pointed out. The applicant is regularly appearing in the case before this court as well as trial court. It is not out of context to mention here that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. At bail stage, deeper appreciation of evidence and circumstances appearing in the case are not permitted and only tentative assessment is to be made, however, where accused satisfies the Court that there are reasonable grounds to believe that he is not guilty of such offence, then the Court must release him on bail. Wisdom is sought from the case titled Yar Muhammad v. The State and another reported in 2004 YLR 2230.

7. It may not be out of place to mention here that the object of bail is neither punitive nor preventive and therefore, deprivation of liberty must be considered a punishment, unless it may be required to ensure the presence of accused during trial. The punishment begins after

conviction and not before it, as in criminal justice system every man is deemed to be innocent until duly found guilty. It needs not to re-emphasize that the purpose of putting the un-convicted persons in custody is nothing but to secure their attendance at the trial.

8. Keeping in view the above facts and circumstances of the case, I hold that reasonable doubt arises with regard to the case of present applicant. Hence, case of the applicant prima facie calls for further inquiry in terms of subsection 2 of section 497 Cr.P.C. Consequently, the interim pre-arrest bail granted to applicants vide order dated 01.09.2021 is confirmed on same terms and conditions. The instant Criminal Bail Application stands disposed of.

JUDGE