

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Appln No.480 of 2021

Date

Order with signature of Judge

1. For hearing of bail application
2. For orders on MA No.6985/2021

24.08.2021

Mr. Tahir-ur-Rehman, Advocate along with Mr. Muhammad Naeem Qureshi, advocate for the applicant along with applicant

Mr. Siraj Ali Khan, Addl. P.G.

M/s. Ali Akbar Ponawala, Tariq Arain and Mustafa Afzal, Advocates for the complainant

AFTAB AHMED GORAR,J: Applicant Shabbir Ahmed Arif son of Ghafoor Ahmed is booked in case Crime No.298/2020 registered with Police Station Clifton, Karachi under section 489-F/420/34 PPC approached this Court by filing the captioned application for pre-arrest bail. The applicant was granted ad-interim pre-arrest bail vide order dated 22.03.2021 and today it is fixed for confirmation or otherwise.

2. Learned Counsel for the applicant submits that the applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives. He further contended that there is unexplained delay of more than 2 days. He submitted that the applicant has neither took any loan from the complainant nor he himself handed over the bounced cheque to the complainant for satisfaction of any borrowed amount rather the cheque was issued as a security, therefore, Section 489-F Cr.P.C. does not attract in the present case. He also contended that the complainant is an influential person being a Japanese national has got registered several false FIRs against the applicant. He submitted that the applicant is about 70 years old and he has nothing to do with the allegations made against him in the FIR. Learned Counsel for the applicant submits that the offence does not fall within the prohibitory

clause of Section 497 Cr.P.C. He lastly added that the applicant is regularly appearing before the trial Court hence the interim pre-arrest bail granted to the applicant may be confirmed. In support of his contention, learned Counsel for the applicant has relied upon the cases reported as Mian Allah Ditta vs. The State & others (2013 SCMR 51), Mian Muhammad Akram vs. The State & others (2104 SCMR 1369), Muhammad Iqbal vs. The State & others (2108 YLR Note 157) and Muhammad Shafi & others The State & others (2016 SCMR 1593).

3. Learned Additional Prosecutor General opposed the confirmation of bail and submitted that neither the issuance of bounced cheque was denied nor the signatures on it were denied by the applicant. He further submitted that since a huge amount of Rs.61,400,000/- is involved for which the applicant had issued cheques dishonestly hence Section 489-F PPC is very much attracted in the case. He also submitted that since the cheques are admitted to be issued by the applicant in respect of his account having insufficient balance, hence he has prima facie cheated the complainant, therefore, he is not entitled for concession of bail and the order of pre-arrest interim bail dated 22.3.2021 may be recalled.

4. Learned Counsel for the complainant adopted the arguments made by the learned Additional Prosecutor General and he further added that the applicant has not only cheated the complainant but he is in habit of committing such type of offences. He also added that after issuing the cheque, the applicant turned under obligation to pay the amount of dishonoured cheque and in case the applicant has nothing to do with the offence, why he issued cheque of his own account having insufficient balance which was dishonoured. Learned Counsel for the complainant also submitted that the applicant has failed to show any mala fide on the part of the complainant hence there is no reason to falsely implicate the applicant in the present case. He submitted that though the cheques of the applicant were

bounced and the complainant was deprived of a huge amount even the applicant and his sons were issued threats to the complainant so that he could withdraw from the criminal cases registered against him. He has also submitted that since the applicant is prima facie linked with the commission of offence thus he is not entitled for concession of bail and prayed that the interim bail granted to the applicant vide order dated 22.3.2021 may be recalled. In support of his contention he has placed reliance on the cases reported as Shameel Ahmed vs. The state (2009 SCMR 174), Muhammad Kamran Bhatti vs. The State (2018 YLR 1554), Nazim Hussain vs. the State (2019 P.Cr.L.J 1759) and Nazar Muhammad & 2 others vs. The State (2012 P.Cr.L.J 430).

5. I have heard the learned Counsel for the applicant, learned Additional Prosecutor General assisted by the learned Counsel for the complainant and perused the record available before me.

6. Admittedly the bounced cheque was issued by the applicant to the complainant knowingly that there is no sufficient balance in his account to encash it hence prima facie dishonesty of the applicant cannot be ruled out unless some evidence is brought on record. The contention of the learned Counsel for the applicant that the cheque was not issued by the applicant to repay any amount of loan or fulfil any obligation therefore, section 489-F PPC does not attract to the instant case, carries no weight. The issuance of cheque by itself carries an implied impression that same is towards repayment of loan or fulfilling an obligation. The applicant had not denied the issuance of the cheque which after presentation was bounced by the bank due to insufficient balance. Moreover, record reflects that the applicant and his sons assaulted upon the complainant, hence a separate FIR under section 324 Q&D Ordinance is also lodged against the applicant and his sons. The applicant instead of compensating the complainant extended

threats to the complainant and assaulted him which act could not be seen in good taste.

7. The mere fact that the offence for which the applicant is charged does not attract the prohibitory limb of section 497 Cr.P.C cannot *per se* make him entitled to the concession of bail. Grant of bail in such like cases is not a rule of universal application as each case merits decision on the basis of its own facts and circumstances. Reliance in this respect may advantageously be placed on the cases of *MUHAMMAD SIDIQUE VS. IMTIAZ BEGUM & OTHERS (2002 SCMR 442)* and *SHAMEEL AHMED VS. THE STATE (2009 SCMR 174)*.

8. It may not be out of place to mention here that the issuance of cheques which are in turn dishonoured has taken our society by storm so much so that such instrument is looked upon by the beneficiary with a degree of doubt and scepticism till it is honoured by the concerned bank. Such practice has also eroded the mutual trust of the general public and there are instances when people shy away from accepting cheques even from trustworthy persons. Moreover, no one is supposed to commit the financial murder of another member of the society. Even otherwise, it is settled that for deciding the bail applications the Court has to observe the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case of at this juncture. In this respect reliance is being placed on the cases of *SALEH MUHAMMAD VS. THE STATE (PLD 1986 Supreme Court 211)* and *THE STATE VS. THE ZUBAIR & 4 OTHERS (PLD 1986 Supreme Court 163)*. The applicant *prima facie* found to be linked the present offence unless a solid evidence is brought on record to deny the involvement, as such the applicant is not entitled to the concession of bail. Consequently, the interim pre-arrest bail granted to the applicant vide order dated 22.3.2021 is recalled. The applicant is present in Court, he is taken into custody and remanded to Central Jail, Karachi.

9. The observations made herein above are tentative in nature and should in no way prejudice/influence the proceedings before the learned trial Court where the case of the applicant be decided on its own merits according to law.

10. This criminal bail application stands disposed of in the above terms. The listed application is also disposed of.

JUDGE