

IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No. 1632 of 2020
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Date	Order with signature of Judge
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For hearing of bail application

14th January 2021

Mr. Zahid Hussain Soomro, advocate for applicant alongwith applicant present on interim pre-arrest bail

Mr.Kashif Nazir Baloch, advocate for the complainant.

Mr. Fahim Hussain Panhwar, DPG alongwith I.O. Moosa of P.S. Khokhrapar.

Salahduddin Panhwar J- Applicant Syed Nazeer Hyder Jafri seeks bail before arrest in FIR No.42/2019 for offence u/s 489-F/ 420/ 506 PPC, registered at P.S. Khokhrapar and FIR No. 54/2019 for offence u/s 489-F/ 420/ 506-B PPC, registered at P.S. Saudabad, Karachi. I intend to dispose of both the captioned bail applications through this common order.

2. Per prosecution, the accusation against the applicant/accused is that applicant/accused committed fraud with the husband of the complainant and in order to pay off liability towards sale transaction of plots he issued cheques to the husband of the complainant, which were on their presentation, were dishonoured/bounced on account of insufficient funds, hence, referred FIRs were registered against applicant/accused.

3. Learned counsel for the applicant/accused contended that there is considerable delay in lodging of FIRs; that there was an agreement between the husband of the complainant and the accused and the husband of the complainant had failed to comply with the agreement, hence the same rescinded; that the police has joined the hands of complainant and applicant apprehends his arrest at the instance of complainant party; that there is civil dispute between the parties; that offence with which applicant/accused is booked is not falling within the prohibitory clause of section 497 Cr.P.C, hence

he prayed for confirmation of interim pre-arrest bail already granted to the applicant/accused.

4. Conversely, learned counsel for the complainant contended that applicant/accused has willfully and intentionally committed fraud by knowing that the cheque which he is issuing will not be honored and malafidely usurped huge amount of money of complainant's husband, the grounds raised in these bail application are relating to consideration only for post arrest bail and no ground has been agitated by applicant for consideration of a bail before arrest, hence, instant applications are liable to be dismissed.

5. Learned Deputy Prosecutor General, Sindh has adopted the submissions of learned counsel for the complainant and vehemently opposed the grant of bail to applicant/accused.

6. Heard learned counsel and perused the record.

7. The mere denial of the applicant regarding missing of the cheque book would not be sole ground to get pre-arrest bail for an offence which is aimed to protect ordinary innocent person when it is admitted by the applicant regarding receipt of huge amount from the husband of the complainant, such admission strengthens the stand taken by the complainant in the FIRs that the accused had taken huge amount from her husband against the sale of 28 plots of land and in order to repay the said amount, the said cheques were issued, but the same were dishonoured/bounced. Thus, *prima facie*, the provision of section 489-F, P.P.C. is squarely attracted in the present case.

8. As regards delay in lodging of the FIR is concerned, the counsel explained that same was occurred as applicant/accused engaged complainant in negotiations, hence argument of learned counsel for applicant/accused regarding delay in lodging of FIR is of no avail.

9. The mere fact that the offence for which the applicant is charged does not attract the prohibitory clause of section 497, Cr.P.C. cannot per se make him entitled to the concession of pre-arrest bail.

10. It is settled that for deciding the bail application 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 at this juncture. Even otherwise, needless to mention that in cases of pre-arrest bail, scope of bail is very limited and applicants are required to establish their case that complaint/FIR is lodged on ulterior motive with malafide intention blatantly or patently, which the counsel for the applicant has failed.

11. Thus taking a tentative assessment of the available record, the applicant/accused is not entitled to the concession of bail at this stage of case. Accordingly, the bail plea is hereby dismissed. However, while parting the trial Court is directed to conclude the trial within a period of two months. These are the reasons for the short order dated 14.01.2021.

12. Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of case.

J U D G E

Sajid