

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CrI. Bail Application No. 80 of 2019
CrI. Bail Application No.204 of 2019

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

10th May, 2019

Ms. Humaira Aftab, Advocate a/w applicants.
 Mr. Siraj Ali Chandio, Addl.P.G. for the State.

=====

The applicants Khawaja Salman Ali and Mohammad Younus Tabani have sought pre-arrest bail in Crime No. 623 of 2018 registered against them under sections 489-F, 420 and 34 P.P.C. at the Sachal police station in Karachi. Earlier, their pre-arrest bail applications were dismissed by the learned 4th Additional District & Sessions Judge, Malir in Karachi on 8-1-2019.

2. Brief facts of the case are that the aforementioned F.I.R. was lodged on 26.10.2018 by Atiqullah Shah. The complainant recorded that he entered into a Sale Agreement with applicant Mohammad Younus Tabani for 5 acres 7 ghunta land situated in Survey No.20, Deh Songal for Rs.45,000,000 and paid Rs.1,000,000 to him as token money but the applicant did not hand over physical possession of the subject plot and kept him on false promises. Later on, it came to the knowledge of the complainant that applicant has no concern with the said plot and he in collusion and connivance with Khawaja Salman (applicant) and one Hasnain Safdar deceitfully and dishonestly obtained the aforesaid amount. Upon complainant's repeated demands, the applicant Khawaja Salman Ahmed gave him a cheque for an amount of Rs. 100,000 on 15.9.2018 and Hasnain Safdar also issued a cheque for Rs. 250,000 on 9.3.2018. When presented for clearance the cheques were dishonored, hence this application.

3. I have heard the learned counsel for the applicant as well as the learned Addl.P.G and examined the record available with their able assistance. None appeared on behalf of the complainant. My observations are as follows.

4. One of the ingredients required to be fulfilled for section 489-F P.P.C. to come into play is that the cheque that is dishonored should have been given for the payment of a loan or satisfaction of an obligation. The learned Addl.P.G. conceded that at the moment, apart from the assertion made by the complainant in the F.I.R., there is no

other evidence on record which would prima facie evidence that the cheque in question was indeed given for the payment of a loan or satisfaction of an obligation. The purpose for issuing the cheque will have to be determined at trial. An offence under section 489-F P.P.C, though a non-bailable offence, carries a potential sentence of up to 3 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C. An offence under section 420 P.P.C. is a bailable one. The delay of more than one month in lodging the F.I.R by the complainant also appears to be unexplained at the moment. In the circumstances, the learned counsel's argument that the sole purpose of this case which has been filed with malafide is to humiliate the applicant due to business difference between the complainant and the applicant, cannot be conclusively ruled out at this stage.

5. Above are the reasons for my short order of 15-4-2019 in terms of which the interim pre-arrest bail granted to the applicants on 15-1-2019 and 11-2-2019 was confirmed on the same terms and conditions.

JUDGE