

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 2182 of 2022

Date	Order with signature of Judge
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Muhammad Ammar Siddiqui
s/o Muhammad Shahid Siddiqui
Vs.
The State

Mr. Muhammad Hussain, Advocate a/w the Applicant/accused.
Mr. Farrukh Aziz Shaikh, Advocate for the Complainant.
Mr. Khadim Hussain, Additional Prosecutor General Sindh.

Date of Hg: 23.01.2023
Date of Order: 23.01.2023

ARSHAD HUSSAIN KHAN, J: The applicant / accused namely; Muhammad Ammar Siddiqui son of Muhammad Shahid Siddiqui after rejection of his earlier application for grant of pre-arrest bail by learned Additional Sessions Judge-V, Central, Karachi, through instant criminal bail application has sought pre-arrest bail in Crime No. 462/2022, registered under Section 489-F/406 P.P.C. at police station North Nazimabad, Karachi. The Applicant was admitted to interim pre-arrest bail by this Court, vide order dated 14.11.2022, now he seeks confirmation of the same.

2. Briefly the facts of the case as narrated in the F.I.R. lodged by the complainant namely; Mirza Javed Baig son of Mirza Qayyum Baig are that in the year 2019 Applicant/accused (Ex-son-in-law of the complainant) and his brother namely; Muhammad Daniyal Siddiqui took Rs.30,00,000/- and Rs.20,00,000/- respectively as loan from the complainant for establishing their businesses but they neither established any business nor returned the amount. However, on demand of the complainant, the applicant/accused issued four (04) cheques total amounting to Rs.44,30,000/- (i) Rs.6,30,000/- vide cheque No. 76045480 dated 23.09.2021, (ii) Rs.10,00,000/- vide cheque No. 76045481 dated 06.10.2021, (iii) Rs.14,00,000/- vide cheque No. 7604582 dated 11.10.2021 and (iv) Rs.14,00,000/- vide cheque No. 7604583 dated 19.10.2021 all drawn on UBL Bank Haidry Market Branch, Block-E, North Nazimabad, Karachi. The said cheques were dishonored/bounced upon presentation in the Bank on

11.02.2022, 04.03.2022, 31.03.2022. Where after, he approached to the applicant/accused and informed about dishonoring of the said cheques, however, when he did not return the amount, the complainant lodged the FIR against the accused persons namely; Muhammad Ammar Siddiqui and Muhammad Daniyal Siddiqui both sons of Muhammad Shahid Siddiqui.

3. Learned counsel for the applicant/accused while reiterating the contents of the bail application has contended that the applicant/accused is innocent and has falsely been implicated in the case with malice and ulterior motives by the complainant. It is further contended that the applicant/accused had contracted the court marriage with the daughter of the complainant and due to said unceremonious marriage, the complainant has a grudge against him since then. It is also contended that due to undue influence the applicant's wife has left abode of the applicant/accused and has been residing with the complainant since 2020. That the complainant has failed to mention in the FIR the date and place of handing over such a huge amount of Rs.50,00,000/- in cash to the applicant/accused and his brother. That there is neither any document nor witnesses have been cited, which could justify the stance of the complaint. It is further contended that the amount claimed in the FIR does not match with the amount of cheques allegedly issued by the applicant. It is urged that the subject cheques were not issued by the applicant/accused and also do not bear his signatures. The cheque book was obtained by the complainant through his daughter and filled with fictitious and false figures in order to get the false FIR against the applicant/accused. That the co-accused namely; Muhammad Daniyal has been granted bail by learned trial court. It is further argued that the facts of the case create doubts and the case needs further inquiry as such the applicant/accused is entitled for confirmation of pre-arrest bail.

4. Learned Addl. P.G. for the State assisted by the complainant has opposed the bail application and urged that the applicant/accused is not entitled for confirmation of bail in the present case.

5. I have heard learned counsel for the parties and perused the material available on the record.

From perusal of the record, it appears that the alleged cheques were issued in months of September and October 2021 whereas the same were deposited for encashment in the months of February and March 2022 with an inordinate delay of more than five months for which no explanation has been provided. The stance of the complainant in the FIR is that he had given cash Rs. 50,00,000/- as loan to the applicant/accused and his brother whereas the cheques which were allegedly issued against the said payment are for Rs.44,30,000/- and there is no explanation why the cheques of short payment have been received by the complainant. The FIR is also silent with regard to any instrument in writing if executed between the parties for giving the loan or issuance of the alleged cheques. The witnesses have also not been cited in whose presence the loan amount was given to the applicant party. Moreover, it is an admitted position that the complainant's daughter had contracted freewill marriage with the applicant/accused against the wishes of the complainant and that too did not last long such fact might cause hatred against applicant/accused and possibility of false allegations against the applicant cannot be ruled out. The accumulative effect of all these facts and circumstances, create a reasonable doubt regarding truthfulness of the prosecution version. It is also established principle of law that benefit of doubt can even be extended at the bail stage. In this regard, reference can be made to the case of *Syed Amanullah Shah v. The State* [PLD 1996 SC 241]. wherein the Hon'ble Supreme Court of Pakistan, inter alia, has held as under:

“5.....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. It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available on record is to be made. The record shows that the applicant/accused is not a previous convict or hardened criminal. Moreover, he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance. The accused was admitted to interim pre-arrest bail on 14.11.2022 and since then he is attending the trial court regularly and no complaint with regard to misusing the concession of ad-interim bail has been made by the complainant.

Keeping in view the facts and circumstances of the case, I am of the opinion that the case of the prosecution requires further inquiry as such the interim bail granted to the applicant/accused, vide order dated 14.11.2022, is hereby confirmed on the same terms and conditions.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Bail Application stands disposed of.

JUDGE