

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-826 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

05.11.2021

M/s. Muhammad Aleem Arain and Muhammad Zafarullah,
Advocates for applicant alongwith applicant.

Mr. Mian Taj Muhammad Keerio, Advocate for complainant
alongwith complainant.

Ms. Sobia Bhatti, Assistant P.G.

ORDER

MUHAMMAD IQBAL KALHORO, - Complainant deals with petroleum products and is owner of M/s. Waheed Petroleum Pump. Applicant is transporter and gets petrol from him on deferred payment and issued a cheque of Rs.41,00,000/- to him but when produced in the Bank was dishonoured, hence, present FIR has been registered against him.

2. Learned Defence Counsel does not deny business relations between the parties. However, he says that the cheque was issued for amount of Rs.100,000/- but complainant has put 4 before 1 by tampering, which is evident from memo / endorsement by the bank; that the cheque was dishonored for two reasons, one insufficient balance, and other different signature on alteration. The alteration and different signature on the cheque is thus established. Besides, there is no material prima facie that the complainant supplied petrol of that much amount to the applicant nor I.O has attended to this fact in investigation. He has relied upon the case of ABDUL GHAFUOR GONDAL v. The STATE through P.G Punjab and another (2020 SCMR 861).

3. Learned Counsel for complainant and learned Assistant Prosecutor General have opposed bail to the applicant stating that there is no mala fide on the part of complainant; the issuance of cheque and relations between them are admitted; the applicant did not move any application for verification of his signature on alteration to rebut presumption against him and therefore the case is made out against him. They have relied upon the case of

RANA ABDUL KHALIQ v. The STAE and others (2019 SCMR 1129) and RAB NAWAZ KHATTAK and another v. The STATE (2021 P.CrLJ 636) to support their arguments.

4. I have considered submissions of the parties and perused material available on record including the case law cited at bar. As stated above the relations between the parties and issuance of cheque are not denied. What is at dispute is amount of Rs.41,00,000/-, the signature and alteration on the cheque. One of reasons why the cheque was dishonoured by the bank is difference in signature on alteration. It was incumbent upon the I.O in the circumstances to send the cheque for forensic report to verify whether alteration made is of applicant or not. In addition, the I.O has not collected evidence of supply of such quantum of petrol synchronizing with the amount alleged against the applicant. Prima facie, due to failure of I.O to attend to this aspect of the case, ingredients of Section 489-F PPC i.e. dishonest issuance of cheque against payment of loan or fulfillment of an obligation, are not made out. Therefore, I am of the view that case against the applicant is of further inquiry and his false implication cannot be ruled out for the amount as stated by the complainant. It is further informed that a summary suit is also pending where verification of the signature of applicant on alteration is yet to come.

5. In view of above, this application is allowed and ad-interim pre-arrest bail of the applicant is hereby confirmed on same terms and conditions. However, if the evidence as above is collected at any time in the proceedings either in the present case or in the summary suit, the complainant would be at liberty to move an application for cancellation of bail before the trial Court first.

6. The observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE

Shahid