

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Cr. Bail Application No. 134 of 2021

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
-------------	---------------------------------------

---

For hearing of bail application.

**28<sup>th</sup> April, 2022**

Mr. Muhammad Kamran Baloch, Advocate for applicant.  
Mr. Amanullah, Advocate for complainant.  
Mr. Talib Ali Memon, A.P.G.

=====

Omar Sial, J: Muhammad Shehzad Mirza has sought pre-arrest bail in crime number 118 of 2020 registered under section 489-F P.P.C. at the Soldier Bazaar police station in Karachi. Earlier, his application seeking bail was dismissed on 19.01.2021 by the learned 10<sup>th</sup> Additional Sessions Judge, Karachi East.

2. A background to the case is that the aforementioned F.I.R. was registered on the complaint of Daniyal Hassan on 07.03.2020 reporting an incident that occurred on 27.01.2020. Daniyal reported that he had given Rs. 1.8 million to the applicant Shehzad Mirza as an investment towards some business (that remained unidentified in the F.I.R.). Money was not returned by the applicant to the complainant so the complainant lodged an F.I.R. No. 546 of 2018 under sections 406 and 420 P.P.C. at the Gizri police station. The two individuals reached a settlement and upon the applicant giving the complainant a cheque of Rs. 1.8 million, the complainant compromised the case with him. The cheque which was given by the applicant to the complainant bounced when it was presented at the bank's counters for clearance.

3. The learned counsel for the applicant has not denied the issuance of the cheque but has argued that the same was obtained as a consequence of intimidation, threats and force while the applicant was in police custody. He however argues that there was no business dealings between the applicant and the complainant but that there was a deal that the complainant had made with one Hanif who cheated many people and fled away. The learned counsel for the complainant did not deny that the cheque was obtained from the applicant while he was in police custody but has argued that it was not issued under duress and

that the same was issued to satisfy the liabilities of the applicant towards the complainant.

4. Upon a query from the learned counsel for the complainant whether there was evidence which could prima facie corroborate the version of the complainant that he had invested an amount of Rs. 1.8 million with the applicant, learned counsel drew my attention to an agreement at page 53 of the file. The authenticity of this agreement will have to be proved at trial. However, at this stage it appears that in terms of the agreement, the complainant had given the applicant an amount of Rs. 3 million, and not Rs. 1.8 million as is claimed in the F.I.R. The learned counsel was unable to satisfy me as to why an amount of Rs.1.8 million was being alleged against a purported liability of Rs. 3 million. Learned counsel argued that this agreement (purportedly executed on 05.04.2017 (though the stamp duty was paid on it 6 months ago) was superseded by an agreement dated 06.01.2019 which is at page 59 of the file. Learned counsel however admitted that the date of the cheque contained in this agreement is different from that given on the subject cheque and how, could an agreement dated 06.01.2019 could refer to a cheque dated 06.07.2019, when it was not the prosecution's case that a post-dated cheque was issued. Further clarity in this regard is required as the subject cheque was presented at the bank counter on 12.06.2019 for clearance i.e. either 6 months after the cheque was given (if issued when the agreement was executed) or 1 month before the date of issuance mentioned in the agreement. The foregoing admitted position raises doubt about the accuracy of the complainant's claim as contained in the F.I.R. and malafide on his part, as well as on the part of the police, cannot conclusively be ruled out at this stage.

5. The complainant had filed a summary suit bearing number 84 of 2020 before the learned 10<sup>th</sup> Additional District Judge, Karachi East, which was decided in his favour on 02.09.2021. The order is under appeal currently. Be that as it may, the standard of proof in criminal case is a lot more stringent in criminal cases compared to those of a civil nature. Whether or not the applicant owed money to the complainant on account any business deal will be decided by the civil courts. Whether there was criminal intent on the part of the applicant and whether it was issued to fulfill an obligation or satisfy a loan (as required by

section 489-F P.P.C.) will have to be determined after the learned trial judge has had the opportunity of reviewing the entire evidence holistically.

6. An offence under section 489-F P.P.C. carries a potential sentence of 3 years and although not bailable falls within the non-prohibitory clause of section 497 Cr.P.C. Keeping the principles enunciated by the Honorable Supreme Court in the case of Tariq Bashir and 5 others vs The State (PLD 1995 SC 34), apart from the fact that the case of the applicant is one of further inquiry, I do not find any exceptional or extraordinary reasons to deny him bail.

7. In view of the above, the interim pre-arrest bail granted to the applicant stands confirmed on the same terms and conditions.

JUDGE