

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.720 of 2023

Date	Order with signature of Judge
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For hearing of bail application

Date of hearing : 26.05.2023
Date of Order : 30.05.2023

Mr. Muhammad Nadeem Khan, Ms. Allena Naqvi and Ms. Fouzia Fateh,
advocates for applicant
M/S Imdad Ali Saheto and Allah Wadhayo, advocates for Complainant
Mr. Siraj Ali Khan Chandio, Additional Prosecutor General Sindh
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AMJAD ALI BOHIO, J:- The earlier bail application, filed by the applicant/accused Shahid Mehmood, son of Shaikh Salehuddin, in relation to Crime No. 165/2022 of PS Awami Colony Karachi, seeking bail for the offence under Section 489-F PPC, before the Court of XII-Additional District & Judge Karachi East, was dismissed vide order dated 22.03.2023. Consequently, the present bail application has been submitted.

2. The allegations leveled against the applicant by Complainant Muhammad Javed Khan are as that after the complainant's retirement, the applicant/accused demanded a sum of money for investment purposes before Eid-ul-Azha, specifically to purchase cattle for the occasion. In response to this request, the complainant delivered an amount of Rs. 56,50,000/- (Fifty Six Lacs and Fifty Thousand Rupees only) for the stated reasons. However, when the complainant requested the return of the amount, the applicant issued a cheque that was subsequently dishonored. As a result, the complainant filed an FIR in connection with these events.

3. The learned counsel for the applicant argues that the complainant lodged the above-mentioned FIR with a delay of six (06) months. It is stated that the applicant had actually invested an amount of Rs. 45,00,000/-, for which a cheque with the number UBL-53802594 was issued as a guarantee. Furthermore, the applicant paid Rs. 56,50,000/- to the complainant, along with the agreed-upon profit. The applicant repeatedly requested the return of the cheque and a copy of the agreement, but the complainant kept him on false hopes and ultimately used the cheque to obtain a memo and lodged the FIR with malicious intention. Additionally, the applicant had previously submitted an application to the Station House Officer (SHO) of PS Awami Colony on 10.10.2022, and a certified true copy of this application is included with the bail application. The challan has already been submitted, and the accused is no longer required for further inquiry. The offence under Section 489-F does not

fall within the prohibitory clause of Section 497 Cr.P.C, as it carries a punishment of three years. He has further contended that there is no likelihood of the trial commencing in future, the applicant requests to be released on bail. In support of these contentions, the counsel relies on the cases of Muhammad Nasir Shafique v. the State through Prosecutor General Punjab and another (2021 SCMR 2092) and Abdul Saboor v. the State through AG Khyber Pakhtunkhwa and others (2022 SCMR 592).

4. The learned counsel for the Complainant and the learned Additional Prosecutor General argue that the Complainant, being a retired person, invested his entire earnings, and the applicant dishonestly cheated him and usurped a significant amount. Therefore, the trial Court was justified in dismissing the bail application. The applicant denies the issuance of the cheque and falsely claims to have paid the amount to the complainant, but no evidence has been provided to support his assertion. In support of their contentions, the counsel for the complainant relies on the cases of Muhammad Imran v. the State and others (PLD 2001 Supreme Court 903) and Syed Hasnain Haider v. the State and another (2021 SCMR 1466).

5. Admittedly, the applicant is currently in custody, and the investigation in the present case has been completed. The applicant/accused is no longer required by the police for investigative purposes. Furthermore, the offence does not fall within the prohibitory clause of Section 497 Cr.P.C, as the maximum sentence under Section 489-F P.P.C is three years. In cases of this nature, the grant of bail is the general rule, while refusal is an exception, as established in the case of Riaz Jafar Natiq (2011 SCMR 1708) that:

“Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others(2009 SCMR 1488) ordaining that where a case falls within non- prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into appeal and the same is allowed.”

6. I have carefully considered the contentions raised by counsel for both parties and have gone through the case laws relied upon. Learned Addl. PG during arguments, after perusal of police papers states that during investigation I.O did not find the applicant/accused being involved in similar type of criminal cases and he is not previously convicted. Criminal culpability of the applicant/accused regarding dishonestly issuing cheque would be determined during trial. Accordingly, the facts reported in the case of Abdul Saboor v. the State through A.G. Khyber Pakhtunkhwa and another (2022 SCMR 592), being relevant to the above case in hand are referred as under:

“As per the contents of the crime report, the petitioner was running a business of poultry; he borrowed some amount from the complainant and to settle the same, he issued the cheque in question to the complainant, which has been dishonored. It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under section 489-F, P.P.C. is three years and the offence does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. This Court in Muhammad Tanveer v. The State and another (PLD 2017 SC 733) has held that "once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts." Prima facie section 489-F of P.P.C. is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under section 489-F, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. At this stage, only a tentative assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception.”

7. In view of what has been discussed above, this Bail Application is allowed and the applicant/accused is directed to be released on bail subject to furnishing solvent surety in sum of Rs.500,000/- (Five Hundred Thousands Rupees) with two sureties each and Personal Recognizance (PR) bond in the like amount to the satisfaction of the trial Court who shall ensure that sureties must be local, reliable and man of means.

8. It is important to note that the aforementioned observations are provisional in nature and shall not influence the trial Court's decision regarding the merits of the applicant's case. However, if the applicant misuses the granted bail in any manner, the trial court retains the authority to cancel the bail and initiate appropriate legal proceedings in accordance with the law.

JUDGE