

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 441 of 2023

Date

Order with signature of Judge

1. For hearing of main case

06.11.2023

Mr. Ahmed Ali Dewan advocate for the applicant
Mr. Muhammad Sajjad Virk advocate for the respondent
Ms. Rubina Qadir DPG

Through this Criminal Miscellaneous Application under Section 497 (5) Cr. P.C. the applicant Muhammad Owais Alam has assailed the legality of the order dated 28.04.2023 passed by the learned VII Additional Sessions Judge Karachi West in Criminal Bail Application No. 1147 of 2023, whereby the respondent No.1 was granted pre-arrest bail under Section 498 Cr. P.C. in FIR No. 114/2023, under Section 489-F PPC, Police Station SITE on the premise that the instant FIR was lodged with a delay of more than 05 months approximately without explaining the reasons for silence of the complainant. Further, there existed a business relationship between the accused and the complainant/applicant. Further, the offense does not fall within the ambit of the prohibitory clause under Section 497 CRPC.

2. The learned counsel for the applicant argued that the name of respondent No.1 is mentioned in the FIR with the specific role of issuing the subject cheque which was on presentation was dishonored. He placed much emphasis that bail granting order is patently illegal, erroneous, factually incorrect, and perverse and is liable to be recalled. Lastly, it was contended that respondent No.1 is a cheater so also arrogant and he is oppressive to the complainant. He emphasized that this Court is well aware of dishonoring the cheques which even if become part of prosecution evidence and brought home the charges would entail punishment to the maximum 3 years or with a fine or with both but it is also to be taken into consideration that when there is an exception for refusal of bail even for the offense where grant of bail is a rule, bail may be and can be refused. Moreover, the Supreme Court has repeatedly held that the mere fact that an offense does not fall within the prohibitory clause of section 497(1) Cr.PC, would not mean that such an offense had become aailable offense. The discretion remains with the competent Court to consider whether a person accused of such an offense does or does not deserve the grant of bail under the established norms governing the exercise of such a power. He next argued that the concession of the

grant of bail to the respondent can be termed as arbitrary, fanciful, or perverse. He argued that no malafide or ulterior motive has been attributed on the part of the complainant to falsely implicate the applicant in the case.

3. I have heard learned counsel for the applicant and the learned APG and have also perused the material available on record.

4. I have experienced that in almost every case, where an accused applies for the concession of bail in the case under section 489-F, P.P.C., it is often opposed on the ground that a huge amount is involved and it is yet to be recovered. The police agency also requests for the physical remand of the accused and the cancellation of bail to facilitate the process of recovery of the amount, in question, in criminal investigation. No such process can be allowed to be adopted either by the Courts dealing with the matter of remand or trial of the offense under section 489-F, P.P.C. or the Investigating Agency to effect recovery.

5. In business circles, the issuance of cheques for security purposes or as a guarantee is a practice of routine, but this practice is being misused by the mischief-mongers in the business community and the cheques, which were simply issued as surety or guarantee are subsequently used as a lever to exert pressure to gain the unjustified demand of the person in possession of said cheque and then by use of the investigating machinery, the issuer of the cheque is often forced to surrender to their illegal demands and in the said manner, the provisions of this newly inserted section of law are being misused. Securing the money in such a manner would be termed as extortion.

6. Pre-arrest bail is an extraordinary relief, whereas post-arrest bail is an ordinary relief. While seeking pre-arrest bail it is the duty of the accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offenses with malafide and ulterior motives.

7. The principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for cancelling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles that apply to setting aside the order of

acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

8. In the instant case, it appears that respondent No.1 was admitted to interim pre-arrest bail by the learned VII Additional District Judge Karachi West, vide order dated 28.04.2023, and since then respondent No.1 has been on bail. However, the complainant has not asserted in his application if he has misused the concession of bail. The only ground raised in this application for the cancellation of bail is that there was sufficient evidence against respondent No.1, in the shape of a cheque which was bounced but the learned trial Court admitted him to pre-arrest bail. In this regard, it may be observed that the offense under section 489-F, P.P.C. is a non-bailable offense; however, being punishable with imprisonment which may extend to three years, it does not fall within the prohibitory clause of section 497, Cr.P.C. This well-settled law that in such cases rule is bail and not jail.

9. For the foregoing reasons, no occasion has been found by this Court for interfering with the lawful exercising of the jurisdiction in the matter of bail by the learned VII Additional District & Sessions Judge Karachi West. Under the circumstances, instant Criminal Misc. Application is dismissed as being devoid of merit, along with pending applications.

JUDGE