

**IN THE HIGH COURT OF SINDH AT KARACHI****Crl. Bail Application No. 2328 of 2023**

Applicant : Syed Muhammad Mehdi  
through Mr. Shahbaz Sahotra, Advocate

Respondent : The State  
through Mr. Muhammad Iqbal Awan, Addl.P.G.

Complainant : Munib Ahmed Khan  
through Mr. Khalil-uz-Zaman, Advocate

Date of hearing : 23<sup>rd</sup> November, 2023

**ORDER**

**Omar Sial, J:** Syed Mohammad Mehdi has sought post arrest bail in crime number 907 of 2022 registered under section 489-F P.P.C. at the Defence police station. His earlier bail plea was denied by the learned Sessions Judge, Karachi South on 07.10.2023.

2. The applicant being an estate agent asked Munib Ahmed (the complainant of the case) to purchase two plots of land, each measuring 500 square yards, from him. An agreement to sell was entered into between the two men however soon Munib Ahmed discovered that Mehdi had cheated him and therefore he asked him for his money back. Mehdi issued a cheque for Rs. 10 million, which bounced upon presentation.

3. Learned counsel for the applicant has argued that there is no business dealings between Mehdi and the complainant; that the complainant in fact is the front man of a marketing agency; the cheque book from which the cheque has been issued was seized by the police when the police arrested Mehdi in a case under the narcotics legislation; it was the police which with malafide intent used the cheque (subject matter of the present case) out of that cheque book. He finally argued that the punishment for the offence fell within the non-prohibitory clause of section

497 Cr.P.C. and thus grant of bail is a rule. Learned Additional Prosecutor General assisted by the learned counsel for the complainant argued that Mehdi is a habitual criminal and therefore does not deserve bail.

4. I have heard the counsels.

5. The primary factor which swayed the learned trial judge to dismiss the bail application of the applicant seems to be his past crime record. The record shown to me shows that apart from the present case, the applicant was booked in three other cases of section 489-F P.P.C. He is on bail in all these three cases. Learned counsel has argued that all the cases under section 489-F have been filed by the same person, though through different complainants. I have looked at this aspect closely, as a recurring offence could deprive the applicant the concession of bail in a case falling within the non-prohibitory clause of section 497 Cr.P.C., I am however not convinced that there is no weight in the argument advanced by the learned counsel for the applicant. The record shows that the Excise Police did seize a Bank Al-Habib cheque book when the applicant was arrested in crime number 4 of 2020 registered under sections 6 and 9(c) of the CNS Act, 1997. While the application filed by the applicant seeking its return is on file, the application does not state the number of the cheque book. This is not unusual for a poorly drafted application, however, I am inclined to give the applicant benefit in this regard, as the challan filed in the present case states that the bank told the investigating officer that the cheque in question had been dishonored due to signature not matching, in addition to insufficient funds. A handwriting experts opinion will clarify this issue as to whether the cheque was signed by the applicant or not. It was the job of the investigating officer to do so, but as is the case in nearly every situation, not a shred of investigation has been done by the investigating officer. This has not been done to date. I have yet to be shown an agreement which prima facie shows that there was an agreement to sell entered into between Mehdi and Munib. The one on record shows the agreement to be between Mehdi and Zahid s/o Ali Zaman. The purpose for which a cheque was issued, if at all, will have to be determined at trial after evidence is led.

6. The applicant has been in custody for approximately three months in a crime which carries a potential sentence of three years. By the time the case is heard and decided the applicant would have undergone his entire sentence without being formally convicted and sentenced by a court of law. The fact that apparently no suit seeking specific performance of the agreement to sell (which as mentioned above have not been shown to me) nor has a suit for recovery been filed to date, also tilts the balance for grant of bail in his favor, as at this preliminary stage I am unable to exclude the possibility that the criminal arm of law has been invoked as an arm-twisting tool.

7. Given the above, the applicant is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs. 500,000 and a P.R. bond in the like amount to the satisfaction of the learned trial court.

**JUDGE**