

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Zulfiqar Ahmad Khan

Cr. Bail Application No. 1162 of 2023
[Muhammad Farooq v. The State and another]

Applicant : Through Mr. Faheem A. Siddiqui,
Advocate
State : Through Mr. Hussain Bux Baloch,
Additional Prosecutor General
Complainant : Through Mr. Ameer Haider Shah,
Advocate
Date of Hearing : 06.07.2023
Date of order : 06.07.2023

ORDER

Zulfiqar Ahmad Khan, J:- Applicant/alleged accused Muhammad Farooq S/o Shoukat Ali through instant bail application under Section 498 Cr.PC seeks pre-arrest bail in Crime No.160 of 2013 registered with Police Station Rissala, Karachi under Section 489-F PPC. The applicant was admitted to ad-interim pre-arrest bail vide order dated 31.05.2023 subject to furnishing a solvent surety in the sum of Rs.100,000/- (rupees one hundred thousand) and today the matter is fixed for confirmation or otherwise.

2. It is alleged in the FIR that the complainant Bharat Kumar had given an amount of Rs.1,500,000/- (rupees fifteen lac) to the applicant for business purpose under an agreement dated 10.10.2018, subsequently complainant further invested a sum of Rs.500,000/- (rupees five lac) to expand the business, but the applicant failed to pay the agreed profit, the applicant however consented to return the amount, but he kept the complainant on false hopes and avoided to pay the same, lastly the applicant given a cheque bearing No.27403315

amounting to Rs.2,000,000/- (rupees twenty lac.) drawn on Bank Al-Falah, Gulshan-e-Iqbal Branch, Karachi to the complainant and also agreed to pay Rs.500,000/- (rupees five lac.) as profit, which cheque was dishonored on its presentation due to insufficient funds.

3. It is contended by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the instant case at the instance of the complainant and the matter is of further inquiry. The applicant is neither previously convicted nor desperate nor hardened or dangerous criminal. He further contended that the offence under section 489-F PPC is punishable upto three years, which does not fall within the prohibitory clause of section 497 Cr.P.C and there is delay of six months in lodging the FIR, for which no plausible explanation has been given by the complainant in the FIR. He further contended that the cheque in question was issued to the complainant a 'security', wherein at its backside it is clearly mentioned that the cheque is for 'no deposit' and that too the agreement was valid for one year only. Counsel contended that the applicant had already paid entire amount of Rs.3,000,000/- (rupees thirty lac) to the complaint via cash.

4. On the other hand, learned counsel for the complainant contended that no malafide is alleged on the part of the complainant; there is WhatsApp chat between the applicant/accused and the complainant that former will pay back the amount to the latter. He further contended that the proceedings section 87 Cr.P.C have commend, where the applicant/accused has been declared as proclaimed offender. Learned Additional Prosecutor General Sindh supported version of the complainant.

5. I have heard both the learned counsel for the applicant as well as complainant and learned Additional Prosecutor General, Sindh.

6. *Prima facie* it appears that the complainant deposited the cheque in question on 04.02.2021 in the Bank, whereas the FIR was registered on 11.08.2021 with delay of about 6 months, hence such delay could not be overlooked as it is reflecting concoction. It is case of the applicant that the cheque in question was issued to the complainant as security for 'no deposit' however the complainant claims that the same has been issued for re-payment, which disputed fact in my humble opinion would be determined at the trial. The offence does not fall within the prohibitory clause of section 497 Cr.P.C and that the case has been challaned and there is no allegation of misusing of concession of interim pre-arrest bail on the part of the applicant.

7. In these circumstances, I have found the case against the applicant as one of further inquiry into his guilt, as envisaged under subsection (2) of Section 497 Cr.P.C and no useful purpose would be served, if the applicant is taken into the custody, hence ad-interim pre-arrest bail granted to the applicant vide order dated 31.05.2023 is confirmed on the same terms and conditions. The trial Court is directed to conclude the trial preferably within a period of 90 days.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

Instant bail application is disposed of accordingly.

JUDGE