

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

Cr. Bail Application No.1423 of 2023

Order with signature of Judge(s)

- For hearing of bail application

11.07.2023

M/s. Muhammad Daud Narejo and Muhammad Yousuf, Advocates
for the applicant

Mr. Talib Ali Memon, APG

Applicant Sikandar Ali Jaffery son of Sultan Haider Jaffery is seeking bail after arrest in FIR No.242/2023 registered with P.S. Azizabad, Karachi under Section 489-F PPC.

2. The allegation against the applicant/accused is that he issued cheque with dishonest intention, which was dishonoured upon its presentation in the bank.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in this case by the complainant with malafide intention and ulterior motive. Per learned counsel, there is delay of 23 days in lodging the FIR and prompt is necessary to set the criminal law into motion. While placing reliance on the case of *Bashir Ahmed v. the State*, reported as **2023 SCMR 748**, he contended that the necessary ingredients for attracting Section 489-F PPC are missing in the present case, as the applicant has not issued the alleged cheque to the complainant for fulfillment of any obligation or repayment of loan, however he gave a blank cheque to the complainant in the year 2021 as security for getting the job. Per counsel, there is no documentary proof which could suggest that the applicant has received an amount of Rs.4,500,000/- (rupees forty-five lac.) and the case is one of further inquiry. He next contended that that the case does not fall within prohibitory clause of Section 497 Cr.P.C and the investigation has already been completed hence the applicant is no more required.

4. On the other hand learned APG argued that sufficient grounds are available which connect the applicant/accused that he with *mala fide* and dishonest intention issued the subject cheque, which are sufficient grounds to constitute the alleged offence, therefore, applicant/accused

is not entitled for the bail. He further contended that the documentary proof against the applicant is available on record; that there is no denial of signature by the applicant/accused; and that the memo with regard to dishonor of cheque in question is on the record.

5. I have heard submissions of the learned counsel for the applicant as well as learned APG and examined the available record. At the outset, delay of about 23 days in lodging the FIR has nowhere been explained. Admittedly, the applicant was an employee of the complainant and it has been alleged that the applicant/accused has received an amount of Rs.4,500,000/- (rupees forty-five lac.) from different parties, for which cheque in question was issued to the complainant, however in contra it is the case of the applicant that he has issued surety cheque for getting the job, which fact under dispute in my humble view would be determined at the trial, as deeper appreciation of evidence is required in this regard. It is clear that the allegation can only be determined at the conclusion of the trial, where deeper appreciation of evidence will be made out whether the accused is involved in the case or not. The allegations by themselves would not constitute bar for the grant of bail in peculiar circumstances of the case. Object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Furthermore, basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars. The prosecution has to explore every avenue to prove guilt of the applicant/accused including the element of *mens rea*. Basic concept of bail is that liberty of an innocent person not to be curtailed unless and until proved otherwise. Deep appraisal and detailed discussion of evidence is not permissible and court should not cross the barrier of permissible limits of law while making tentative assessment of the evidence at the bail stage. Exercise of this power should, however, be confined to the cases in which a good *prima facie* ground is made out for the grant of bail in respect of the offence alleged.

6. In view of the above legal position, I am of the view that the applicant has successfully made out a good *prima facie* case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, applicant Sikandar Ali Jaffery son of Sultan Haider Jaffery is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of the Nazir of the trial Court.

7. 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.

JUDGE

B-K Soomro