ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1080 of 2023

Date	Order with signature of Judge

For hearing of bail application

21.8.2023

Mr. Muhammad Safdar advocate alongwith Ms. Roheela Nazar advocate for the applicant
Mr. Muntazir Mehdi, Additional PG alongwith SI Rana Muhammad Zahoor PS Defence (Investigation) Karachi
Mr. Muhammad Aziz Khan advocate for the complainant

On 1-4-2023, an F.I.R. was lodged by Muhammad Iqbal, against the applicant with Police Station Defence, Karachi, for having issued two cheques of Rs. 500,000/- which when presented were bounced from UBL Bank Limited, DHA Phase- Branch, Karachi. According to the contents of that report, a case under section 489-F PPC was registered, against the applicant; who had applied for bail before arrest; which was rejected by the Additional Sessions Judge II (South) Karachi vide order dated 27.4.2023.

2. It is submitted by the learned counsel for the applicant that the offense alleged had not fallen within the prohibitory clause, as provided by section 497, Cr.P.C. The learned trial court rejected the bail applicant on the ground that the applicant was a habitual offender and was not correct; that the applicant has been falsely implicated in the case. Learned counsel further submitted that the complainant himself admitted in the so-called agreement dated 14.05.2020 wherein the signature of the applicant traced out on his second page that the above cheques were given in 2020 as surety, however, these facts were not disclosed by the complainant in FIR. He has further submitted that the applicant is entitled to the benefit of the doubt even at the bail stage. Then there is an inordinate delay, which has not been explained, in registering the FIR. And, as yet there is also no evidence, at this stage, about the stated ingredients of section 489F of the Code, which may bring it within the ambit of mala fide on the part of the complainant as such this factum, also makes it a case of further inquiry; that alleged offense is punishable up to 03 years and both the parties have already filed Civil Suit before the Civil Court which is still sub-judice before learned trial Court; that after obtaining interim pre-arrest bail, the applicant has been appearing before the Court regularly and

neither he has have misused the concession of bail nor frustrated the trial sub-judice before the learned trial Court; he next argued that if interim pre-arrest bail is not confirmed, the applicant will be arrested and humiliated at the hands of police due to ulterior motives. Learned counsel has submitted that the complainant has admitted that the agreement dated 14.05.2023 that the alleged cheques were given as surety however he has not disclosed the aforesaid factum in the FIR thus false implication of the applicant in the aforesaid crime cannot be ruled out; that there is delay of about 03 years in lodging the FIR. Learned counsel for the applicant has relied upon the statement dated 21.08.2023 and the case law reported as ***2022 SCMR 592, 2022 SCMR 1467, 2017 SCMR 2060, 2023 SCMR 581, 2023 SCMR 364, and 2018 YLR Note 279***. He lastly prayed for allowing the bail application.

3. Opposing the grant of bail, learned counsel for the complaint, submits that the subject cheques belonged to the applicant and he has not been able to point out any mala fide on the part of the complainant or animus, possibly lurking behind his long-due arrest in a non-bailable/cognizable offense, which is a sine qua non to divert the usual course of criminal law. He emphasized that in pre-arrest bail discretion at this stage cannot be exercised in favor of the applicant as no mala fide has been pointed out and that section 489F does not require proof of loan or fulfillment of an obligation to be disclosed at this stage. He also pointed out that there are two more cases of similar nature against the applicant. Learned counsel argued that there was/is sufficient incriminating material against the applicant in the shape of the original cheque, the statements of the witnesses in whose presence he gave it to the complainant, and the dishonor slip. Per learned counsel under clause (a) of section 118 of the Negotiable Instruments Act, 1881, the subject Cheques were/are to be presumed to have been issued against valid consideration. The learned counsel further contended that the observation of Additional Sessions Judge II (South) Karachi vide order dated 27.4.2023 that an offense under section 489-F, P.P.C. was made out is by law. In support of his contention learned counsel for the complainant has relied upon the case of Syed Hasnain Hyder vs. The State **2021 SCMR 1466**, *Shameel Ahmed vs. The State* **2009 SCMR 174,** and *Zulfiqar Ali vs. The State* **2018 MLD 1581**.

4. I have heard learned counsel for the parties and perused the material available on record.

5. Prima facie the civil suit No. 520 of 2023 filed by the complainant against the applicant is pending before the Court of 2nd Senior Civil Judge Karachi South and the applicant has also filed civil suit No. 843 of 2023 before 2nd Senior Civil Judge Karachi South for declaration cancellation and recovery of amount, damages and permanent injunction both litigation are pending adjudication and the issue of the subject cheques are also one of the cause of action. In the presence of civil litigation between the parties no conclusive findings could be given in the present case which pertains to section 489-F PPC for the reasons that the proposition that all security cheques are beyond the scope of section 489-F, P.P.C. is too broad to be accepted at this stage as every transaction must be minutely examined in the light of the jurisprudence to determine whether section 489-F, P.P.C. is attracted or otherwise.

6. In the instant case, prima facie, the liability arises out of a claim for breach of contract, a claim which is neither admitted nor acknowledged by the parties as both have filed civil suits as discussed supra. It appears that the dispute between the parties is civil and the complainant wants to use the machinery of criminal law to settle it and it is yet to be determined by the trial court whether an offence under section 489-F, P.P.C. is constituted or otherwise.

7. Indeed, the alleged offense is punishable by up to 03 years which does not fall within the ambit of the restraining clause of Section 497, Cr.P.C. Moreover, after completion of the investigation, a challan has been submitted, and the learned trial Court is seized of the matter and it is informed that the applicant is regularly appearing before the learned trial Court and facing their trial. Neither applicant has misused the concession of bail nor frustrated the trial on any pretext, hence refusal of bail at this stage would not serve any useful purpose, but there is serious apprehension of humiliation and harassment of the applicant at the hands of police.

8. No doubt the applicant is nominated in the FIR however it is delayed for about 03 years for which no plausible explanation has been furnished by the prosecution, which is one of the grounds for bail and this is the reason the applicant has attributed malafide on the part of the complainant. The grounds agitated by the learned counsel for the complainant cannot be assessed at the bail stage without recording the evidence in the matter as such the applicant has made out a case for pre-arrest bail in the aforesaid crime at this stage.

9. Although the provision of Section 498 Cr. P.C is neither ancillary nor subsidiary to Section 497 Cr.P.C but is an independent Section, however, bare reading of language of sub-section (2) of Section 497 Cr.P.C provide considerations for grant of bail under Section 497(2) Cr.P.C it practically merged Section 497/498 Cr.P.C. into one aspect qua concept of pre-arrest bail persuading it to act conjointly in all fairness. The practice for grant of extraordinary relief has passed through the transitory period with divergent interpretations qua its scope since its inception, however, the law is not static rather it is growing day by day. The Supreme Court while handing down a salutary judgment titled *"Meeran Bux vs. The State and another*" (**PLD 1989 Supreme Court 347**) enunciated the concept of pre-arrest bail which was more innovative, liberal, crafted in consonance with the intent of the legislature, hence, it has conceptually widened its scope in its entirety, elaborating its concept in the spirit of section 497/498 Cr.P.C. It was reiterated in another judgment of the Supreme Court titled "*Syed Muhammad Firdaus and Others v. The State* (**2005 SCMR 784**). The Supreme Court virtually introduced a broadened mechanism of interpretation to adjudge the element of malafide or malice at the touchstone of the merits of the case. In the said case, mentioned above, the accused who has ascribed the injury to the deceased on the leg (simple) was granted pre-arrest bail by Sessions Judge which was recalled by the learned High Court while exercising suo-motu revisional jurisdiction, however, the order of learned Sessions Judge was restored by the Supreme Court while elaborating the principle in the above said terms.

10. Keeping in view the facts and circumstances narrated above and the judgments pronounced by the Supreme Court on the subject issue, it has made it abundantly clear that while granting pre-arrest bail, Court can consider the merits of the case in addition to the element of malafides/ulterior motives which has to be adjudged in the light of law laid down by the Supreme Court in the case law stated supra. As a consequence, Courts of law are under a bounded duty to entertain a broader interpretation of the "law of bail" while interpreting material placed before it more liberally to arrive at a conclusion that is badly required due to the apparent downfall in the standard of investigation. Otherwise, the liberty of a person is a precious right that has been guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. To abridge or curtail liberty merely on the ground of being involved in a criminal case without adjudging it on merits would certainly encroach upon the right against free life. This right should not be infringed, rather it

has to be protected by the act of the Court otherwise it may frustrate the concept of safe administration of criminal justice.

11. Considering the above circumstances, interim pre-arrest bail already granted to the applicant vide order dated 18.5.2023 stands confirmed on the same terms and conditions. The applicant is directed to appear regularly before the learned trial Court to face his trial. However, it is made clear that in case of non-appearance of the applicant or deliberate misuse of the concession of bail, the learned trial Court would be at liberty to pass any appropriate order or initiate proceedings against accused persons under the law.

12. The observations made above are tentative and the learned trial Court shall decide the case strictly on merits.

JUDGE

Shahzad/*