

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

Criminal Bail Application No. 1740 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

28.08.2023

Mr. Raja Meer Muhammad, advocate along with applicant present.
Mr. Muhammad Ilyas Khan Tanoli advocate for complainant.
Mr. Abrar Ali Khichi, Addl.P.G

Through the instant bail application, the applicant has approached for a grant of pre-arrest bail in terms of Section 498-Cr.P.C in FIR No. 174/2023 registered for offenses under Section 489-F PPC of P.S Kharadar Karachi. His pre-arrest bail was declined by the trial Court vide order dated 02.08.2023 on the ground that no extraordinary circumstances have been pointed out to allow the applicant such extraordinary relief of pre-arrest bail and his interim relief vide order dated 17.07.2023 was recalled.

2. Learned counsel for the applicant has submitted that the case lodged against the applicant is of a civil nature but the complainant with malafide intention converted it to Criminal litigation to harass the applicant. Per learned counsel, the purported cheque was issued as a guarantee and the complainant had already received entire amount however he failed to return the original cheque to the applicant despite several requests. Learned counsel further submitted that the applicant has filed Civil Suit before the learned Senior Civil Judge Karachi South for rendition of accounts, recovery of outstanding amount, Cancellation of cheque and mandatory injunction, which is pending adjudication. Per learned counsel the FIR is delayed for about one month and no explanation has been provided by the complainant. Learned counsel also submitted that the applicant moved various applications to the competent authorities on the premise that he owes amount of Rs. 25,00,000/- which is due to be paid by the complainant however to save his skin he has lodged a false FIR against him, which is apathy on his part; that malafide of the complainant is apparent on the face of record as such false implication of the applicant in the present case cannot be ruled out. In support of his contention, he relied upon the cases of *Mian Allah Dita vs. The State* **2013 SCMR 51**, *Muhammad Asghar vs. The State* **2008 MLD 717**, *Rao Ghulam Mustafa vs. The State* **PLJ 2023 CRC 228**, and *Arshad Hussain vs. The State* **2012 P.Cr. L.J 428**. He prayed for confirmation of pre-arrest bail granted to him vide order dated 08.08.2023.

3. On the contrary, learned counsel for the complainant has opposed the bail plea of the applicant on the ground that the offense under Section 489-F PPC does not fall within the prohibition contained in Section 497(1) Cr. P.C however in the present case the applicant had issued a cheque of Rs.1,89,000/- dated 18.01.2023 which was on presentation was bounced with the return memo of insufficient funds which factum falls within the ambit of dishonesty as such he is not entitled to the extraordinary relief of pre-arrest bail. Learned counsel for the complainant further submitted that the applicant has failed to show any malafide on the part of the complainant or the local police to justify his bail plea without recourse to the investigating process, Such conduct of the applicant displays his malafide intention to compel the complainant to room around and seek recovery of his legitimate amount which is apathy on the part of the applicant. He next argued that the grant of pre-arrest bail is an extraordinary remedy in criminal jurisprudence; it is divergent from the usual course of law, in such circumstances the applicant has failed to show his innocence to bypass the investigating process and appear and seeking judicial protection without showing the malafide and ulterior motive on the part of complainant and police as such he is not entitled to the concession of bail. Per learned counsel dishonoring of cheque was/is a financial murder of the complainant. Learned counsel emphasized that the dishonoring of the cheque is a prima facie offense and the ingredients of Section 489-F have been made out. Learned counsel submitted that the applicant has admitted in paragraph 5 of the memo of bail application that the cheque was issued as guarantee which is sufficient to discard the point of view so raised by the applicant. In support of his contention he relied upon the cases of *Rana Abdul Khaliq vs. The State* 2019 SCMR 1129, *Mukhtar Ahmed vs. The State*, 2016 SCMR 2064, *Muhammad Imran vs. The State* PLD 2021 SC 903, *Muhammad Yaqoob vs. The State* 2022 MLD 1065, *Shakil Ahmed Sahito vs. The State* 2022 MLD 1004, *Waseem Akhtar vs. The State* 2022 MLD 358, *Muhammad Ishaq vs. The State and Syed Zahoor-Ul-Hassan Shah vs. The State* 2021 P. Cr. L.J 886. He lastly prayed for the dismissal of the instant bail application.

4. At this juncture, after arguing the matter at some length as discussed supra both parties agreed to the disposal of the instant bail application in the terms that the applicant shall furnish the security/ cash amount of the equivalent amount of cheque of Rs. 1,89,000/- dated 18.01.2023 either with the Nazir of this Court or before the learned trial; and the trial Court after recording evidence and hearing the parties shall decide the fate of the case so far as the amount so deposited by the applicant shall be disbursed in favor of the complainant if he succeeds in the aforesaid case, however in the intervening period the subject amount shall remain intact. Be that as it may I intend to decide the lis on merits.

5 I have heard learned counsel for the parties and with their assistance examined the documents and read Section, 489-F PPC applied by the prosecution.

6. I am cognizant of the fact that the grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is the diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump-up charges through abuse of process of law, therefore an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation. However, in the present case, it appears that in the challan prosecution has applied section 489-F P.P.C, which is non-bailable offence, however does not fall within the prohibitory clause of Section 497 Cr. P.C. On the subject issue, the Supreme Court has already decided the point involved in the present matter in the cases of *Riaz Jafar Natiq Vs. Muhammad Nadeem Dar and others* (2011 SCMR 1708), *Abdul Hafeez vs. The State* [2016 SCMR 1439], *Dr. Abdul Rauf Vs. The State* [2020 SCMR 1258] and *Muhammad Ramzan vs. State* [2020 SCMR 717].

7. Prima facie Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under Section 489-F PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing its absence in the conduct of an accused to a degree that constitutes dishonesty by him within the meaning of Section 489-F, P.P.C. In the facts of the present case, such an assessment can be made at the trial to evaluate whether any improper benefit, if at all, has been derived by the applicant on account of the investment made by the complainant with the aforesaid company, and whether the company is to be prosecuted or only a person who allegedly signed the cheque. This aspect of the matter cannot be determined at the bail stage in the present case, however, the trial Court would be in a better position to thrash out the aforesaid analogy under law.

8. It is also an admitted position that the investigation, in this case, has been completed and a charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question of probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if his bail is

confirmed. Moreover, the material evidence relating to the subject cheque would be documentary evidence, which would either be with the complainant or with the bank of the complainant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. As dishonesty is an ingredient of the offense under Section 489-F of the P.P.C. The offense under Section 489-F alleged against the applicant does not fall within the Prohibitory Clause of Section 497(I) Cr.P.C. on the aforesaid proposition I am supported by the decisions rendered by the Supreme Court in the cases of Tariq Bashir v. State **PLD 1995 SC 34**, Zafar Iqbal v. Muhammad Anwar **2009 SCMR 1488**, Muhammad Tanveer v. State **PLD 2017 SC 733** and Sheikh Abdul Raheem v. The State etc. **2021 SCMR 822**.

9. Because of the above, the principle that grant of bail in such offenses is a rule and refusal an exception, authoritatively and consistently enunciated by the Supreme Court, is attracted in the instant case. Thus, the applicant is entitled to the confirmation of bail earlier granted to him vide order dated 8.8.2023.

10. It is clarified that the observations made herein are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

11. In view of the above, the interim bail granted to the applicant / accused vide order dated 8.8.2023 is hereby confirmed subject to furnishing additional security/cash amount of cheque of Rs. 1,89,000/- dated 18.01.2023 with the Nazir of this Court. However, if the concession of bail is misused by the applicant in any manner whatsoever, the learned trial Court will be at liberty to take action against him under the law, including cancellation of bail without referring the matter to this Court.

12. These are the reasons for my short order dated 28.8.2023, whereby I confirmed the pre-arrest bail of the applicant on the same terms and conditions as discussed supra.

JUDGE