

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.954 of 2023

Date	Order with signature of Judge
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For hearing of bail application

31.8.2023

Mr. Naseer-ul-Hassan Khokhar advocate for the applicant alongwith applicant Muhammad Asif
Mr. Talib Ali Memon, Assistant PG
Mr. Ghulam Rasool Soho advocate for the complainant

Through this bail application under Section 498 Cr. P.C., the applicant has sought admission to pre-arrest bail in F.I.R No.939/2022, registered under Section 489-F PPC at Police Station Gulshan-e-Iqbal, Karachi.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant issued a cheque of Rs.52,50,000/- of Faysal Bank Ayesha Manzil Branch Karachi which has been deposited by the complainant in his account No.01170101374336, Meezan Bank, Block-6, Gulshan-e-Iqbal Karachi but the same has been bounced. Such a report of the incident was given to Police Station Gulshan-e-Iqbal, Karachi on 25.11.2022, which registered F.I.R No.939/2022, under Section 489-F PPC. The earlier bail plea of the applicant has been declined by the learned X-Additional Session Judge (East) Karachi vide order dated 03.05.2023 in Criminal Bail Application No.395/2023.

3. It is, inter-alia, contended by Mr. Naseer-ul-Hassan Khokhar, learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case. The learned counsel submitted that the applicant has no concerns and no transaction with the complainant nor he has issued any cheque to the complainant; that the present applicant has not executed any agreement with the complainant; that the above-mentioned cheques have been issued according to an alleged agreement and FIR has been lodged against the applicant without any rhyme and reason. He has further contended that there is an inordinate delay of about 03 months in lodging the FIR without a plausible explanation by the complainant. He has further argued that a person/litigant cannot be vexed twice, therefore, the present FIR is based on malafide intention and ulterior motives, and the present case against the applicant requires further inquiry. He lastly prayed for allowing the bail application.

4. Learned Assistant PG assisted by Mr. Ghulam Rasool Soho, learned counsel for the complainant has opposed the application and states that the learned trial Court has rightly dismissed the bail plea of the applicant with cogent reason, which does not call for interference by this Court and the applicant does not deserve the concession of pre-arrest bail. He added that the accusation against the applicant is well founded and the prayer of the applicant for the grant of pre-arrest bail is liable to be dismissed. Per learned counsel for the complainant, there are four ingredients of Section 489-F PPC, firstly, dishonest issuance of cheque, secondly, cheque must be issued for repayment of loan or discharge of liability, thirdly, cheque must be dishonored and fourthly, it must be dishonored at the fault of accused and not on the part of Bank. Learned counsel emphasized that the word dishonestly is defined under Section 24 of the Pakistan Penal Code, which provides, that whoever does anything to cause wrongful gain to one person to cause wrongful loss to the other person is said to do that thing dishonestly. Since the applicant/accused has issued a post-dated cheque leaf as part of the agreement dated 11.3.2022 but the same was dishonored on 11.8.2022, and when he knew that, he had made no arrangements for encashment of the cheque just to cause wrongful gain to him and wrongful loss to the complainant; that the cheque leaf was not issued without consideration as per Section 118 of the Negotiable Instruments Act. Learned counsel further argued that since, no malice whatsoever has been alleged against the complainant for falsely implicating the applicant/accused with the commission of the alleged offense, which is a condition precedent for seeking pre-arrest bail, besides, it is a settled principle of law that, while deciding bail application, tentative assessment is to be made, deeper appreciation is to be avoided and only the contents of FIR, statements of PWs are to be looked into and there is sufficient material available with the prosecution to connect the applicant/accused with the commission of the alleged offense, therefore, bail application of the applicant was rightly rejected by the learned trial Court. He prayed for the dismissal of this bail application.

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 in the present case.

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 in the 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 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 v. Muhammad Nadeem Dar and others (2011 SCMR 1708), Abdul Hafeez v. The State [2016 SCMR 1439], Dr. Abdul Rauf v. The State [2020 SCMR 1258] and Muhammad Ramzan v. State [2020 SCMR 717].

7. Prima facie, as yet no proof has been tendered by the complainant to show that the amount of Rs.52,50,000/- was owed by the complainant and in lieu thereof the applicant had issued the subject cheque, though the purported cheque was issued by Danish Mushtaque proprietor of Pak China Town Karachi in favor of the complainant. Besides the complainant has not produced any document to show at this stage, whether the applicant is a member/director of Pak China Town Karachi and all are in league with each other to cheat the complainant. Even the prosecution has not applied Section 420 PPC either in the F.I.R. or in the charge sheet to attract the element of cheating. As far as the ingredients of Section 489-F of the Code are concerned since the subject cheque was issued by Danish Mushtaque for encashment in favor of the complainant and the applicant has neither been shown as co-signatory nor privy to the alleged contract of sale and purchase of the subject plots in the Pak China Town Karachi.

8. In the instant case, prima facie, the circumstances indicate that the cheque in question was issued to the complainant on 10.8.2022 towards payment of some booking files, however, the complainant lodged FIR No.939/2022 for an offense under Section 489-F PPC, though the alleged offense took place on 10.8.2022 and reported to police after approximately three months late. Prima facie, the complainant had tried to convert a civil dispute into a criminal case as per the agreement cited supra; and the learned trial Court has to evaluate the same judiciously, independently, whether the relevant offense is attracted or otherwise. Even otherwise, it has already been clarified by the Supreme Court in the cases of Shahid Imran v. The State and others 2011 SCMR 1614 and Rafiq Haji Usman v. 5 Chairman, NAB and another 2015 SCMR 1575 that the offenses are attracted only in a case of entrustment of property and not in a case of investment or payment of money. In the case in hand, it is the prosecution's case that the complainant agreed with Danish Mushtaque

about the booking files of the subject plots of Pak China Town Karachi and in lieu thereof received the subject cheque.

9. As far as the liability of the applicant is concerned, the same is to be judicially seen by the trial Court after recording the evidence to the extent whether the applicant is one of the directors and/or proprietor of the company and equally responsible to return the amount to the complainant. 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, 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 the law.

10. At this stage it is important to note that 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.

11. For what has been discussed above, this bail application is accepted and the earlier ad-interim pre-arrest bail granted to the applicant vide order dated 05.5.2023, is hereby confirmed, against the surety bond already furnished, however, the applicant shall appear before the trial Court on every date of hearing without fail.

12. All the observations made hereinabove are tentative and shall have no bearing on the final determination of guilt or innocence by the trial Court.

JUDGE