

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 1990 of 2023

For hearing of Bail Application.

Applicant/ Accused : Faisal Kasbati son of Ghulam through Mr. Danish Nayyer, Advocate.

Complainant/State : Through Ms. Amna Ansari, Additional Prosecutor General Sindh a/w IO/ASI Akram, P.S. Orangi Town, Karachi and Complainant.

Date of hearing : 09-10-2023

Date of order : 09-10-2023

*FIR No. 348 /2023
u/s: 489-F PPC r/w challan u/s 506-B PPC
P.S. Orangi Town, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/Accused seeks post-arrest bail in the aforesaid crime after the same was declined by the Additional Sessions Judge-XI, Karachi (West) by order dated 21.08.2023.

2. As per the Complainant's narrative in the FIR lodged on 15.07.2023, he had agreed to sell his land to the Applicant/accused for Rs. 12,000,000/- whereupon he (the Complainant) gave Rs. 4,000,000/- to the accused to get the land transferred to the Complainant's name (so as to be competent to effect the sale), and simultaneously the accused gave the Complainant a cheque of Rs. 12,500,000/- which was dishonoured for insufficient of funds; and when the Complainant demanded the money, he was given life threats by the accused and the co-accused, hence the addition of section 506-B PPC in the challan along with section 489-F PPC.

3. Heard learned counsel for the Applicant, learned Addl. P.G. and the Complainant present in person and perused the record.

4. The cheque was dated 20.03.2023. Though the FIR states that it was presented for payment on 20.05.2023, the return memo of the bank (page-71) shows that it was in fact presented on 26.06.2023 when it was dishonored. The FIR was then lodged on 15.07.2023. The Complainant has not explained the reason for presenting the cheque after three months of its issue, nor the delay in lodging the FIR.

5. Counsel for the Applicant submits that the transaction as alleged in the FIR and the written agreement relied upon by the Complainant are fabrications; that since the land was not entered in the Complainant's name in the record of rights, until such time the cheque was given as a security and hence the note scribed on the back-side of the cheque: "*Against Registration of Land*". From that note on the cheque, it does appear that the contract between the parties was conditioned on the entry of the land in the Complainant's name, and hence the cheque was not intended to be presented until that condition was fulfilled. In such circumstances, the fact that the bank account of the accused did not have sufficient funds at the time, is not material. Also, the Complainant's narrative in the FIR that as seller he had advanced Rs. 4,000,000/- to the accused/buyer to effect entries of the land, seems implausible as in such transactions acts to be performed by the buyer as a pre-condition to sale are usually adjusted into the sale price and the seller is not out-of-pocket to the buyer. Therefore, the submission on behalf of the accused that the cheque was not issued with any dishonest intention seems to have force.

6. The offence alleged under section 489-F PPC does not fall within the prohibitory clause of section 497 CrPC, and thus the grant of bail becomes the rule and its refusal the exception. As regards the allegation of criminal intimidation under section 506-B PPC, that appears to be more of an afterthought to buttress the FIR. The challan too does not show any investigation made into that allegation.

7. For the foregoing reasons, the case against the accused is one of further inquiry falling within the ambit of subsection (2) of section 497 Cr.P.C. Therefore, the applicant Faisal Kasbati is granted bail in

FIR No. 348/2023 subject to furnishing solvent surety in the sum of **Rs. 500,000/- [Rupees Five Hundred Thousand only]** alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations above are tentative and shall not be construed to prejudice the case of either side at trial.

*PA/SADAM

JUDGE