

*Order Sheet*

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Cr. Bail Appln: No.S-744 of 2023

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DATE

ORDER WITH SIGNATURE OF JUDGE(S)

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For orders on office objection  
For hearing of main case

**09.10.2023**

Mr. Aziz Ahmed Laghari advocate for applicant, who is present on bail.

Ms. Rameshan Oad, A.P.G. for the State.

Mr. Muhammad Shoaib advocate for the complainant.

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**ZULFIQAR ALI SANGI, J** :- Through captioned bail application, applicant Rashid son of Abdul Rasheed seeks his pre-arrest bail in FIR No.64 of 2023, registered at PS Ghariabad, District Mirpurkhas for offence under section 489-F, PPC After his bail was declined by learned Ist. Additional Sessions Judge, Mirpurkhas vide order dated 10.07.2023.

2. Since the facts of the prosecution case are already mentioned in F.I.R as well impugned order, therefore, there is no need to reproduce the same.

3. Learned counsel for applicant submits that applicant being innocent has falsely been involved in this case by the complainant with malafide intention; that FIR is belated by seven months, which has not been properly explained by the complainant; that alleged offence is not punishable with death or imprisonment for life or even sentence of ten years, therefore, the same does not fall within prohibitory clause of section 497(i), Cr.P.C; that summary Suit between the parties is pending before the competent Court of law, in which leave to defend the Suit was allowed without furnishing surety, as the cheque in question is 'self' and not in the name of complainant; that there is no any amount outstanding against the applicant nor applicant issued cheque in the name of complainant, therefore, in such circumstances, the case of present applicant requires further inquiry and applicant is entitled for confirmation of

interim pre-arrest bail already granted to him by this Court vide order dated 18.07.2023.

4. Conversely, learned A.P.G appearing on behalf of the State and counsel for the complainant opposed the confirmation of interim bail of applicant on the grounds that applicant is nominated in FIR , eye-witnesses supported the version of the complainant as narrated in FIR for issuance of cheque, as such, prima facie there are reasonable grounds to believe that applicant has committed the alleged offence, hence he is not entitled for confirmation of interim bail already granted to him by this Court. They prayed for dismissal of this bail application.

5. Heard and record perused with their able assistance.

6. It is undeniable fact that applicant is nominated in FIR, which is belated by seven months no plausible explanation is furnished by the complainant. It is observed that if the cheque bearing No.50000001 was issued as 'self' only, then there will be no question of any offence, which also allows the (unidentified) bearer to collect the proceeds and is presented by any person. Even it does not reflect that the cheque was issued being cross cheque. In the present case, it is quite obvious, if the payee is 'self' it can be reasonably and correctly presumed that the money for which the cheque was issued was to be paid to the drawer himself and it is also reasonable to presume that a person would not dishonestly issue a cheque to pay money to himself and that the cheque was not issued towards the repayment of a loan or towards the fulfillment of some legal obligation one has towards oneself. It is important to note that a 'self-cheque' has neither been defined by the Penal Code nor the negotiable instruments Act, 1881, but it is obviously a cheque wherein the drawer himself is the payee. The term 'payee' has been explained by Section 7 of Negotiable Instrument Act,1881 to mean "The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid". It is strange to note that the impugned order is absolutely silent about the fact of the cheque in issue being a 'self cheque' while dismissing the bail application of the present applicant. It is also observed that the offence with which the applicant is charged does fall within prohibitory clause

of section 497(i), Cr.P.C, as the same is not punishable with death or imprisonment for life. It is a fact that summary Suit between the parties is pending before the competent Court of law, in which, leave to defend the Suit was allowed without furnishing surety as the cheque in question is '**self**' one and not in the name of the complainant. The applicant is attending the trial Court regularly and there is nothing on record to show that he misused the concession of bail. The case has already been challaned before the competent Court of law and applicant is no more required by the police for further investigation.

7. At bail stage, only tentative assessment is to be made. In view of such circumstances, I am of the view that applicant has made out a case of further inquiry entitling him for confirmation of interim pre-arrest bail. Resultantly the instant bail application is allowed and ad-interim pre-arrest bail earlier granted to applicant is hereby confirmed on the same terms and conditions.

8. The applicant, who is present on interim bail has been confirmed as above, is directed to attend the learned Trial Court regularly if he fails to appear, the Trial Court would be at liberty to take action against him in accordance with law.

9. Needless to mention here that the observations made hereinabove are tentative in nature and will not prejudice the case of either party at the time of trial.

10. In the above terms, instant bail application stands disposed of.

JUDGE