

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 2527 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

REASONS DATED 04.05.2024

Mr. Muhammad Aslam Bhutta, Advocate for applicant a/w M/s. Aftab Ali Mastoi and Muhammad Raza Hussain, Advocates.
Mr. Saleem Akhtar Buriro, APG.

Applicant Muhammad Khalil son of Muhammad Siddiq is seeking bail after arrest in FIR No. 461/2023 lodged under Section 489-F PPC at P.S. Site Super Highway Karachi.

The allegation against the applicant/accused is that he issued cheque with dishonest intention which was dishonoured upon presentation in bank.

Per learned counsel the applicant/accused there is delay of 20 days in lodging of FIR and prompt is necessary to set the criminal law into motion and the guilt of the applicant/accused is yet to be adjudged at the conclusion of trial, therefore, applicant/ accused be enlarged on bail.

On the other hand, learned Addl. P.G. argued that sufficient grounds are available which connects the applicant/accused that he with mala fide and dishonest intention issued the subject cheque which is sufficient ground to constitute the alleged offence, therefore, applicant/accused is not entitled for bail.

I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material.

At the outset delay of about 20 days in lodging of the FIR has nowhere been explained, offence falling Under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. The matter pertains to the business transaction and it is yet to be determined at trial as to whether issuance of cheques by the applicant/accuse in favour of the complainant was with its honest or dishonest intention pursuant to the liability lying against the applicant/accused. Furthermore, the evidence is documentary in nature and the same will be adjudged at the time of evidence.

It is clear that allegation can only be determined at the conclusion of the trial, where deeper appreciation of evidence will be made out whether the accused is involved in the case or not. The allegations by themselves would not constitute bar for the grant of bail in peculiar circumstances of the case. Object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Furthermore, basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars. The prosecution has to explore every avenue to prove the guilt of applicant/accused including the element of mens rea. The basic concept of bail is that liberty of an innocent person is not to be curtailed unless and until proved otherwise. Deep appraisal and detailed discussion of evidence is not permissible and court should not cross the barrier of permissible limits of law while making tentative assessment of the evidence at the bail stage. The exercise of this power should, however, be confined to the cases in which a good prima facie ground is made out for the grant of bail in respect of the offence alleged.

This bail application was allowed at the conclusion of the hearing vide short order dated 02.05.2024 whereby applicant Muhammad Khalil son of Muhammad Siddiq was granted bail subject to furnishing solvent surety in the sum of Rs.200,000/- (rupees two lac) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court. Above are the reasons of short order.

Before parting, I would like to further observe that if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court

JUDGE

Aadil Arab