ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1367 of 2024

Date	Order with signature of Judge

For hearing of bail application

For hearing and Order: 19.07.2024

Mr. Muhammad Ishtiaq Khan, advocate for the applicant.
Nemo for the complainant
Ms. Seema Zaidi APG, along with PI Riaz Alam, PS Preedy.

O R D E R

Adnan-ul-Karim Memon, J:- Through this bail application under Section 497 Cr.P.C., the applicant Muhammad Naveed Zameer has sought admission to post-arrest bail in F.I.R No.637/2023, registered under Section 489-F PPC at Police Station Preedy Karachi.

2. The earlier bail plea of the applicant has been declined by the III-Additional Sessions Judge Karachi South vide order dated 11.06.2024 in Criminal Bail Application No.1940 of 2024 with the following reasoning:-

> *"On perusal of the record, it appears that the applicant/accused has claimed that his checkbook was stolen/misplaced but he did not inform the concerned bank or police in this respect. The cheque in question pertained to the account of the applicant/accused which was dishonored due to insufficient funds. No enmity has been alleged against the complainant for misusing his alleged stolen/misplaced cheque for false implication. Grant of bail offences not covered by the prohibitory clause of section 497 (1) Cr.P.C could not be claimed as of right especially when sufficient is available on record to connect the accused with commission of non-bailable and cognizable offence. Accordingly, the instant bail application stands dismissed."*

3. The prosecution story is that complainant Muhammad Naeem lodged a report with the Police Station against the applicant with the allegations that he cheated him by issuing a fake cheque of Rs.30,00,000/= (Rupees Thirty Lacs Only) against the loan amount. The details of the 07 cheques are Cheque No.A-22406591 amount to Rs.30,00,000/= dated 15.12.2022, Cheque No.A-60931841 amounting to Rs.30,00.000/= dated 20.12.2022, Cheque No.A-22406592 amounting to Rs.200,000/= dated 15.01.2023, Cheque No.A-60931844 amounting to Rs.300,000/= dated 20.03.2023, Cheque No.A-60931843 amounting to Rs.300,000/=, Cheque No. A-60931842 amounting to Rs.300,000/= dated 20.01.2023, Cheque No.22406588 amounting to Rs.325,000/= dated 10.12.2022 for Account No.01830101316935 of Meezan Bank, Model Colony. The said cheques were deposited by the complainant in his bank account of JS Bank, Electronic Market Saddar and the said cheques were bounced on 11.05.2023.

4. The learned counsel for the applicant, contended that the applicant is innocent and has been falsely implicated in the present case with malafide intention as such the complainant lodged a false FIR against the applicant to recover her alleged amount by invoking Section 489-F PPC; he next contended that the story as set out by the complainant in the FIR is concocted and fabricated. Learned counsel has raised his voice of concern about the apathy of the learned trial Court to non-suit the applicant and left him in the lurch on the premise that the offense under Section 489-F was/is attracted. Learned counsel added that Section 489-F PPC is non-bailable, however, punishable for up to three years and does not fall within the ambit of the prohibitory clause of Section 497(1) Cr.P.C. He added that the alleged was obtained by the complainant through duress and pressure while keeping the applicant/accused under illegal detention, but the applicant made certain arrangements with the bank to stop payment. He argued that the applicant/accused has never issued the alleged cheque to the complainant and the applicant/accused is not under any liability to pay a single penny to the complainant. He next submitted that there is no business transaction or any other transaction between the applicant/accused and the complainant has fabricated a false story. He submitted that the fundamental rights of the applicant guaranteed under the Constitution of the Islamic Republic of Pakistan 1973 are being infringed by the complainant and as such the applicant is left with no other remedy under the law, but to approach this Court. He prayed for allowing the bail application.

5. Ms. Seema Zaidi APG has submitted the applicant intentionally and deliberately issued the cheques to the complainant, which were later dishonored, thereafter the applicant kept the complainant in false hopes, compelling him to lodge a report with police. She further submitted that the complainant is unable to recover his huge amount from the applicant. She further submitted that there is no malafide on the part of the complainant as such no indulgence of this Court is made out. She next argued that all ingredients required for constituting an offense punishable under Section 489-F PPC are fully available in the instant case and keeping in view the material available on record the trial Court declined bail to the applicant. She, therefore, prayed that the bail application of the applicant is liable to be dismissed on the same analogy. She lastly prayed for the dismissal of the bail application. This Court vide order dated 21.6.2024 issued notice to the complainant to appear and assist this Court and the matter was adjourned to 12.7.2024 and on that date SHO PS Preedy Karachi submitted report that complainant was informed about the date of hearing, but he had chosen to remain absent and the matter was

adjourned for today, but he is called absent without intimation compelling this Court to hear the parties present in Court.

6. I have anxiously considered the arguments advanced by the respective parties and scanned the entire record with their assistance.

7. The allegation against the applicant is that he issued seven cheques to the complainant, which on presentation were dishonored due to insufficient funds in his account, and, therefore, a criminal case under Section 489-F, P.P.C. was registered against him, however; the complainant averred in his complaint that the applicant has cheated him by issuing false cheques of the huge amount in respect of loan obtained by the applicant / accused and now he is not giving the valuable money duly received by him. The learned counsel for the applicant has refuted the claim of the complainant on the premise that there is no such proof that the applicant received such amount from the complainant as there is no privity of contract between the parties of whatsoever nature and this was the reason the complainant remained silent for a longer period and with malafide intention he appeared before the police on 21.9.2023 and lodge the FIR against the applicant to compel him to bow before his illegal demands, for that applicant seeks protection as he has been incarcerated in jail since his arrest in a false case.

8. The questions involved in the present proceedings is whether the cheques in question given for surety purpose could be dishonoured, entailing the punishment under Section 489-F P.P.C. and whether the alleged amount could be recovered by detaining the applicant for an indefinite period. Section 489-F, P.P.C. was originally inserted in Pakistan Penal Code, 1860 by Ordinance LXXII of 1995, providing conviction for counterfeiting or using documents resembling National Prize Bonds or unauthorized sale thereof and while the same was part of the statute, again under Ordinance LXXXV of 2002, another Section under the same number viz. 489-F of P.P.C. was inserted on 25.10.2002 providing conviction and sentence for the persons guilty of dishonestly issuing a cheque towards repayment of loan or fulfillment of an obligation, which is dishonored on its presentation.

9. In that newly inserted Section 489-F of P.P.C., the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend up to 3 years or with a fine or both. The cheque amount involved in the offense under such a section is never considered stolen property. Had this been treated as stolen property, the Investigating Agency would certainly have been equipped with the power to recover the amount also as is provided in

Chapter XVII of P.P.C. relating to offenses against property. The offense under Section 489-F, P.P.C. is not made part of the said Chapter providing the offenses and punishments of offenses against property, rather in fact the same has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks. When on 25.10.2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts subject-matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under Section 489-F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense.

10. The maximum punishment provided for such an offense cannot exceed 3 years. Even this conviction of 3 years is not an exclusive punishment. By using the word "or" falling in between the substantive sentence and the imposition of a fine, the Legislature has provided the punishment of a fine as an independent conviction, and this type of legislation brings a case of such nature outside the scope of prohibitory clause of Section 497(1), Cr.P.C. The possibility cannot be ruled out and it would remain within the jurisdiction of the trial Court that ultimately the sentence of fine independently is imposed and in such eventuality, nobody would be in a position to compensate the accused for the period he has spent in incarceration during the trial of an offense under Section 489-F, P.P.C.

11. I have experienced that in almost every case, where an accused applies for the concession of bail in the case under Section 489-F, P.P.C., it is often opposed on the ground that a huge amount is involved and it is yet to be recovered. No such process can be allowed to be adopted either by the Courts dealing with the offense under Section 489-F, P.P.C. or the Investigating Agency to effect recovery. In business circles, the issuance of cheques for security purposes or as a guarantee is a routine practice, but this practice is being misused by the mischief-mongers in the business community and the cheques, which were simply issued as surety or guarantee are subsequently used as a lever to exert pressure to gain the unjustified demand of the person in possession of said cheque and then by use of the investigating machinery, the issuer of the cheque is often forced to surrender to their illegal demands and in the said manner, the provisions of this newly inserted section of the law are being misused. Securing the money in such a manner prima facie would be termed extortion.

12. Primarily, in bail matters, it is the discretion of every Court to grant the bail, but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under Section 489-F, P.P.C. Every transaction where a cheque is dishonored may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly that the cheque in question is dishonored.

13. In the instant case, prima facie, the circumstances indicate that the cheques in question were issued to the complainant for surety purposes on 11.5.2023, while the FIR was lodged on 21.9.2023 i.e. after the delay of more than four months.

14. Prima facie, the complainant had tried to recover his alleged amount by invoking penal action against the applicant and converted a civil dispute into a criminal case by lodging F.I.R, which is prima facie apathy on the part of police; and now the learned trial Court has to evaluate the same factum judiciously, independently, whether the relevant offense is are attracted and could be invoked.

15. 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. 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 the applicant about a certain business, and in lieu thereof, he received the subject cheque. The delay per se in lodging the F.I.R. is also one of the grounds for bail in such circumstances of the case. That being so, one of the foundational elements of Section 489-F P.P.C. is prima facie missing due to peculiar facts and circumstances of the case, however, the ingredients of the same are yet to be proved before the trial Court. The invocation of penal provision would, therefore, remain a moot point. The ground that prosecution is motivated by malice may not in these circumstances be ill-founded for the reason that the complainant waited for a considerable period and lodged an FIR which needs a thorough probe by the trial Court in terms of Section 497(2) Cr. P.C

16. Coming to the main case, the intent behind the grant of bail is to safeguard the innocent person from the highhandedness of police / complainant, if any; and, very strong and exceptional grounds would be

required to curtail the liberty of the accused charged for, before completion of the trial, which otherwise is a precious right guaranteed under the Constitution of the country. However, the complainant has also the right to prove his/her case before the learned trial Court beyond the shadow of a doubt, therefore, the parties ought to be left to the learned trial Court to record evidence of the parties so that the truth may come out. Besides the above, in the case of *Tariq Bashir v. The State* (**PLD 1995 SC 34**), the Supreme Court has taken stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offenses punishable with imprisonment of fewer than 10 years and held that "grant of bail in such offenses is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded." While elaborating exceptions, albeit it was mentioned that if there is a danger of the offense being repeated, if, the accused is released on bail, then the grant of bail may be refused but it is further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not be based on surmises and artificial or weak premise. Even otherwise to ensure that the accused may not repeat the same offense if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offense would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such ground should not be an absolute bar in the way of grant of bail. It may be noted that there is a sky-high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration. It is a settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in a particular category of offenses without placing any prohibition on such discretion.

17. Once the Supreme Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by the Supreme Court under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 has binding effect on all subordinate Courts. On the aforesaid proposition, I seek guidance from the decisions rendered by the Supreme Court in the cases of *The State v. Syed Qaim Ali Shah* (**1992 SCMR 2192**) and *Khan Asfandyar Wali and others v. Federation of Pakistan* (**PLD 2001 SC 607**).

18. I expect the Courts below to adhere to these binding principles in the future and not to act mechanically in the matter of granting or refusal of bail because the liberty of a citizen is involved in such matters; therefore, the same should not be decided in a vacuum and without proper judicial approach.

19. In view of the facts and circumstances narrated above, I am of the considered view that the learned Court below has erred in appreciation of the law on the subject while rejecting the post-arrest bail of the applicant, hence, the same is set at naught, as a consequence, I am of the considered view that the case of the applicant is of further inquiry and is fully covered under Section 497(2) Cr.PC, entitling him for the concession of post-arrest bail in the light of the ratio of the judgments passed by the Supreme Court as discussed supra.

20. For the reasons discussed supra, the instant bail application is accepted. The applicant Muhammad Naveed is admitted to post-arrest subject to furnishing his surety in the sum of Rs.200,000/- (Rupees Two Lac only) with one more solvent surety of the like amount as well as PR Bond of the same amount to the satisfaction of the trial Court. However, the learned trial Court would be at liberty to cancel his bail application if the applicant misuses the concession of bail. The trial Court is directed to examine the material witnesses positively within one month. Such compliance reports be submitted through the MIT-II of this Court.

21. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial.

JUDGE

Shafi