

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-165 of 2024

(Muhammad Latif-ud-Din Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 08.08.2024

Mr. Abdul Ghani, Advocate for the applicant along with applicant
Mr. Haji Qalandar Bux, Advocate for complainant a/w complainant
Mr. Shahzado Saleem, Additional P.G Sindh a/w I.O.
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ORDER

Adnan-ul-Karim Memon, J. Through the instant bail application, the applicant Muhammad Latif-ud-Din has approached this court for a grant of pre-arrest bail in terms of Section 498-Cr.P.C in FIR No.86/2024 registered for offense under Section 489-F PPC, of P.S Satellite town, Mirpurkhas.

2. His pre-arrest bail application was declined by the Additional Sessions Judge-II, Mirpurkhas vide order dated 18.07.2024 on the ground that the applicant had issued the cheque and his signature over the cheque was found genuine; that no previous enmity or even malafide had been attributed against the Police and complainant regarding the false implication of the applicant in the subject crime. The observation of the trial court is against the findings of the Supreme Court in the unreported case of *Muhammad Anwar vs. the State* in Crl.PLA No.340/2024 vide order dated 03.06.2024.

3. The defense counsel is arguing for the confirmation of bail already granted to the applicant on the grounds that the applicant is innocent and has been falsely implicated; that the FIR has been lodged with malicious intent and after an unexplained delay of three months. Learned counsel for the applicant contended that the delay in filing the FIR casts doubt on the prosecution's credibility more particularly in the 489-F PPC case. He added that the applicant was not present at Mirpurkhas at the relevant point in time when the alleged cheque dated 13-12-2023 was issued as he was available in Karachi and the FIR was lodged on 11-05-2024 after an inordinate delay. He further submitted that the applicant/accused had been dragged malafidely by the complainant. He argued that the accused has no criminal record or involvement in similar cases. He next argued that he has not misused the concession of interim bail as such there's no risk of him fleeing and the police is trying to arrest him for ulterior motives and harass him at the behest of the complainant; that offense allegedly committed by the applicant/accused does not fall within the prohibitory clause. He prayed for allowing the bail application.

4. At the outset, the learned Additional Prosecutor assisted by the learned counsel for the complainant has refuted the assertion made by the applicant and vehemently opposed the bail application on the ground that the applicant intentionally and

deliberately issued the cheque to the complainant, which was later dishonored due to insufficient funds. Per learned counsel for the complainant, the applicant is serving in the police department and he is very clever after issuing the cheque got his account closed showing his dishonest intention as per the report of Meezan Bank; that the signature of the accused is genuine and the complainant has no malafide to implicate the applicant in case; that even he has not submitted such application regarding the cheque if it was misplaced by him and the cheque was bounced by the bank on the presentation. He further submitted that the amount in respect of Poultry business is very much clear and the contents of FIR that he kept the complainant in false hopes. He added that the applicant/accused was obliged to make payment and fulfill his obligation but he misused powers and authority being a police official so also issued threats to the complainant for his involving in false cases and a plea of alibi taken by the accused was not applicable at bail stage, as this plea could be determined by the trial court. Per learned counsel, all ingredients as 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. He, therefore, prayed that the bail application of the applicant is liable to be dismissed on the same analogy.

5. I have heard the learned Counsel for the parties present in court and perused the record with their assistance.

6. I am also well aware of the fact that the grant of pre-arrest Bail is an extraordinary relief that is extended in exceptional circumstances when glaring malafide is shown on the part of the prosecution to cause unjustified harassment and humiliation of a person in case of his arrest. Besides, before conviction, it is presumed that every accused is innocent.

7. The allegation against the applicant is that he issued a cheque of Rs.900,000/- dated 13-12-2023 to the complainant, which on presentation was dishonored on 06-02-2024, and, therefore, a criminal case under Section 489-F, P.P.C. was registered against him on 11-05-2024. It has become transparent that the matter in hand, ex-facie, seems to be civil, as it is evident from the contents of the F.I.R that there was a civil transaction between the parties, and both the parties agreed to do poultry business, however; the complainant averred in his complaint that applicant had cheated him in February 2024 by issuing false cheque of the huge amount in respect of the business transaction and now he is not giving him valuable money since.

8. The question involved in the present proceedings is whether the alleged amount of the cheque could be recovered by sending the applicant behind bars for an indefinite period in the 489-F PPC case for that punishment cannot exceed 3 years and whether the cheque was issued towards the fulfillment of an obligation within the meaning of section 489-F P.P.C.

9. The aforesaid questions have already been set at naught for the reason that 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 the cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and lastly, the cheque is dishonored. Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount. Because of the above, the question of whether the cheques were issued towards repayment of the loan or fulfillment of an obligation within the meaning of Section 489-F PPC is a question, that would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offense under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offenses not falling within the prohibitory clause is a rule and refusal is an exception.

10. 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.

11. 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. 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 the poultry business, and in lieu thereof, he received the subject cheque.

12. 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 factum needs a thorough probe by the trial Court.

13. In view of the facts and circumstances narrated above, I am of the considered view that the learned two Courts below have erred in appreciation of the law on the subject while rejecting the bail of the applicant, hence, the same is set at naught, as a consequent, I am of the considered view that the case of the applicant falls within the ambit of section 498 Cr.PC, based on the term malafide intention, entitling for the confirmation of interim pre-arrest bail already granted to the applicant vide order dated 25.7.2024 in the light of the ratio of the judgments passed by the Supreme Court as discussed supra, which is hereby confirmed on the same terms and conditions.

14. 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.

15. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the complainant positively within one month. If the charge has not been framed, the same shall be framed before the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

JUDGE

“Ali Sher”