

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-04 of 2024

Applicant : Applicant present on bail whereas his counsel is called absent.

Complainant : Through Mr. Anwar Rajput, Advocate a/w complainant.

Respondent : The State through Mr. Imran Ahmed Abbasi, Asst. Prosecutor General, Sindh

Date of hearing : **29.01.2024**

Date of Order : **29.01.2024**

O R D E R

AMJAD ALI SAHITO, J:- Through instant bail application, the applicant/accused seeks his admission on pre-arrest bail in Crime No.176 of 2023, for offence under sections 489-F PPC at P.S. City Hyderabad, after his bail plea was declined by the learned 7th Additional Sessions Judge, Hyderabad, vide order dated 26.12.2023.

2/- The details and particulars of the F.I.R. are already available in the bail application and F.I.R, same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3/- Learned Asst. P.G assisted by learned counsel for the complainant vehemently opposed to the grant of bail by contending that the applicant has been nominated in the F.I.R. with specific role; that huge amount is involved in the case; that no proof with regard to any enmity between the parties or missing of cheque has been placed on record; that the delay in lodging the F.I.R. has been plausibly explained. Lastly prayed for dismissal of bail application.

4/- I have heard the parties present in Court, and have gone through the available record.

5/- Once again, Mr. Muhammad Rahim Gaju, Advocate while holding brief on behalf of Mian Taj Muhammad Keerio, learned counsel for the applicant requires adjournment on the ground that latter is unwell. On last date of hearing

viz. 22.01.2024, learned counsel for the applicant has completed his arguments however, during course of arguments, he has invited attention of this Court towards cancellation of agreement (available at page 39 of Court file) whereas complainant has denied from the execution of said cancellation as such in order to ascertain the true facts, the Investigating Officer was directed to call witnesses of the said agreement and record their statement.

6- The case of the complainant is that the applicant had purchased the tiles amounting to Rs.27,49,395/- and in lieu thereof he has issued a cheque bearing No.10031142 dated 02.09.2023 for the same amount of Bank Islamic Bank; however, when the said cheque was presented for its encashment the same was dishonored due to insufficient funds; hence the ingredients of Section 489-F PPC is very much applicable in this case. Furthermore, the applicant knew that no amount is lying in his account even then he issued a cheque which prima facie shows that he has deliberately committed cheating and fraud with the complainant party. It is noted that on last date of hearing, learned counsel for the applicant argued that there is an agreement between the parties regarding the purchase of tiles however, subsequently same was cancelled for which the matter was adjourned with direction to the Investigating Officer call the witnesses of said cancellation of agreement. Today, the I.O is present and submits statements of witnesses recorded by him and perusal of which shows that the version of complainant has not been supported by the said witnesses. It appears that in order to save his skin the applicant has taken false plea and prepared forged cancellation agreement.

7/- No doubt, Section 489-F PPC does not fall within prohibitory clause, however, if reasonable grounds as well as circumstances are considered, bail can be declined even in respect of such cases which do not fall under prohibitory clause of section 497 Cr.P.C. Appraisal of the record reflects that applicant / accused is directly involved in the present case. As far as the delay in lodging of F.I.R is concerned, the same has been plausibly explained by the complainant that after obtaining orders from the Court of learned Ex-Officio Justice of Peace, he was able to get registered the present F.I.R; thus such delay in view of the above circumstances cannot be considered as fatal to prosecution case. Record further reflects that no proof with regard to any enmity between the parties or missing of the cheque has been placed on record. Furthermore, no ill-will or malafide is alleged against the complainant party by the applicant even otherwise he has shown in F.I.R with specific role. In this regard, I am

fortified with the case law of Hon'ble Supreme Court of Pakistan [2019 S C M R 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

8/- At bail stage, only tentative assessment is to be made. In view of above discussion, there is sufficient material available on record to connect the applicant/accused in the commission of offence and so also he has also failed to make out a good case for confirmation of bail. Consequently, the bail application is **dismissed** and the interim pre-arrest bail earlier granted to the applicant/accused vide order dated 01.01.2024 is hereby re-called. A copy of this order be communicated to the learned trial Court for information.

9/- Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

JUDGE

Hafiz Fahad