

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail Application No.S- 503 of 2023

Date	Order with Signature of Hon'ble Judge
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1. For Orders on office objection.
2. For hearing of bail after arrest

08-09-2023.

Mr.Muhammad Pervaiz Rajput, advocate for the Applicant
 Mr. Khadim Husain Malik, advocate for complainant.
 Syed Sardar Ali Shah Rizvi, Additional P.G for the State

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KHADIM HUSSAIN SOOMRO, J:- The applicant seeks pre-arrest bail in Crime No. 01/2023, offence u/s 489-F, 506/2 PPC, registered at Police Station Khanpur Mahar. Prior to this, the applicant had filed such a bail before arrest application before the Sessions Judge Ghotki, which was assigned to learned IInd Additional Sessions Judge Ghotki, who dismissed his bail application vide order dated 10-04-2023, hence this bail application.

2. Brief facts of the prosecution case are complainant Muhammad Sadique lodged the FIR on 03-01-2023, alleging therein that he and accused Zahid Khan were on friendly terms with each other. On 12-01-2022, the applicant accused approached the complainant and requested a loan of Rs. 80,000/-. Consequently, the complainant provided the sum mentioned above in the presence of witnesses Abdul Rehman and Mir Muhammad. Instead of repayment of the loan amount, the applicant issued Cheque No. 00100352 drawn to Bank Islami, dated 25-11-2022 in favour of the complainant. When the complainant presented the said Cheque in the bank, the same was dishonoured; after that, he approached the applicant accused, who took out a pistol from his fold and delivered menacing threats to him. Then, the complainant filed an application for registration of an FIR against the accused, which was allowed, and after obtaining the order from the Court; he appeared at the police station and lodged the above-said FIR.

3. It is contended by learned counsel for the applicant that applicant/accused is innocent and has falsely been implicated by the complainant in this case; that incident took place on 15-12-2022, and he

obtained the order from the Court on 24-12-2022, however he lodged the FIR on 03-01-2023 with unexplained delay; that Cheque of the applicant/accused was missing, hence he lodged such NC report available at page No. 39; that offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, the case against the applicant/accused requires further inquiry and he is entitled to his release on bail.

4. Learned DPG for the State, assisted by learned counsel for the complainant, opposed the bail application on the ground that the applicant had dishonestly issued a Cheque with the intention to commit fraud with the complainant and same was dis-honoured on its presentation; that applicant/accused has provided the financial loss to the complainant; hence he is not entitled to grant of bail.

5. I heard learned counsels for the parties and have gone through the material available on record.

6. Admittedly, the FIR was lodged by the complainant after obtaining an order from the Justice of Peace. He obtained the order on 24-12-2022; despite that, he lodged the FIR on 03-01-2023 with a delay of about 10 days, and the complainant has not explained such delay, although the police station is situated at a distance of only half a kilometre. Moreover, prima facie, there is no evidence available on record to show that an amount of Rs. 80,000/- was paid by the complainant to the applicant/accused; neither is there any receipt nor an agreement between the parties to strengthen the version of the complainant. The dishonouring memo shows that the Cheque in question was returned due to insufficient funds. As yet, no proof has been tendered to show that the amount of Rs. 80,000/- was paid by the complainant to the applicant accused. Currently, there is a lack of evidence pertaining to the specified components outlined in section 489F of the Pakistan Penal Code, which may bring it within the ambit of mala fide on the part of the complainant. In the circumstances, this also makes it a case for further inquiry. The reliance can be placed in the case of, *Bashir Ahmed v/s The State & another (2023 SCMR 748)*.

7. It is a well-settled principle of law that further inquiry refers to a question that is closely related to the outcome of a case, where a tentative evaluation of the available evidence is necessary in order to arrive at a fair and equitable conclusion. The situation of inquiry pre-supposes assumes the tentative evaluation, which may generate uncertainty regarding the culpability of the accused in the criminal act. It is widely established that the primary purpose of a trial is to ensure that an accused undergoes the legal process rather than to punish an accused who is awaiting trial. The fundamental concept entails affording the accused an opportunity to respond to the charges levelled against them rather than subjecting them to prolonged incarceration.

8. The offences, as alleged committed by the applicant accused, does not come within the restriction provided in section 497 of the Cr.P.C. In the case of *Muhammad Tanveer V. State (PLD 2017 SC 733)*, the Supreme Court of Pakistan has expressed astonishment and sadden that bail is routinely denied in situations where an offence doesn't come within the restriction provided in section 497 of the Cr.P.C on dubious justifications and the same was considered as an unnecessary financial burden on the general public, in term of their food and transportation to the Courts. The relevant ratio of the judgment is reproduced as under:-

“ We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation”.

9. The Supreme Court of Pakistan, in the case of *Muhammad Imran v. The State (PLD 2021 SC 903)*, has formulated the grounds for the case to fall within the exception meriting denial of bail as (a). the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further, the Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exceptions on the basis of the material available on the record. In the case at hand, the prosecution has failed to establish any of the above grounds, meriting the denial of the application of the applicant. The Apex Court also settles that deeper appreciation of the evidence is not permissible while deciding the bail application, and the same is to be decided tentatively on the basis of material available on the record.

10. In view of above, it is a case for further inquiry within meaning of Sub-Section (2) of Section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed. The interim pre-arrest bail already granted to the applicant Zahid Khan vide order dated 26.07.2023 is confirmed on same terms and conditions. The applicant present is directed to continue his appearance before learned Trial Court, which is also at liberty to pass appropriate order if concession of bail is misused by the applicant.

11. At this juncture, the learned Deputy Prosecutor General emphasized that the case is not being pursued, and therefore, proper direction is to be given to the trial court to proceed with the matter expeditiously. The learned trial Court is hereby directed to decide this matter within a period of three months after receipt of this order. It is made clear that no frequent adjournment shall be granted to either party on any flimsy ground.

12. Needless to say that the observations recorded above are tentative in nature those may not affect case of either of the party at trial.

JUDGE

