

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Appln No.62 to 64 of 2020.
& Cr. Bail Appln. No.1730 of 2020.

Date: Order with signature(s) of the Judge(s)

Priority Case.

1. For Orders on MA No.1197/2020.
2. For Hearing of Main Case.

10th June, 2021.

M/s. M. A. Kazi and Mr. Irshad Ahmeed Jatoi advocates for the applicants in Cr. Misc. Application Nos. 62 to 64 of 2020 and for respondent No.2 in Cr. Bail Appln No.1730/2020.

Mr. Rashid Mehmood Siddiqui advocate for respondent No.2 in Cr. Misc. Appln Nos. 62 & 64 of 2020.

Mr. Ijaz Ali Khan Sabzari advocate for the applicant in Cr. Bail Appln No.1730 of 2020.

Mr. Siraj Ali Khan Chandio, Addl. P.G.

By the dint of this order I intend to dispose of three [03] Cr. Misc. Applications for cancellation of bail and forth is pre-arrest bail.

By order dated 09.01.2020 applicant Muhammad Awais Shaikh was granted pre-arrest bail. Relevant Para-7 & 8 are produced as under:

"7. Perusal of record reveals that subject cheque was issued in the light of agreement and the complainant has also received payment to two cheques amounting to Rs.40,000,000/- and Rs.20,000,000/- which were issued in terms of same agreement. It is also admitted fact that the subject cheque was not bounced due to insufficient funds but same was returned due to the stop of payment by the applicant/accused in the month of April 2018. There is business transaction between the parties and the civil litigation is admittedly pending between them. The alleged cheque was issued to the compliant side on 05.03.2018 but it was presented before the concerned bank on 04.09.2019 with the delay of about 18 months for which no explanation has been given. No offence is yet to be provided through evidence at trial. Further that there is delay of about 08 days in lodging the FIR but it has not been explained plausibly. Moreover, Section 420 PPC is bailable while both offences made in the FIR is not fall within the ambit of prohibitory clause and it is well settled principle of law that in cases not falling within the prohibitory clause of Section 497, grant of bail is rule and its refusal an exception. There is nothing on record to who

that the applicant/accused has any previous criminal record or the applicant/accused misused the concession of interim relief. The accused has joined the investigating. In view of above case of the applicant accused falls in the ambit of further inquiry.

8. In view of the above facts and circumstances and in the larger interest of justice, the interim bail order dated 30.12.2019, granted to the applicant/accused is hereby confirmed subject to enhancement of surety amount from 200,000/- [two lacs] to Rs.2,000,000/- [twenty lacs]. Applicant/accused is directed to furnish enhanced surety amount before this court within 30 days from the date of this order, if the accused fails to furnish the enhanced surety amount within the stipulated period, his bail stands cancelled automatically without further order".

That order is impugned by the complainant in Cr. Misc. Application No.63 of 2020 whereas, co-accused who were also granted bail by the trial court with same observation that has been impugned in Cr. Misc. Application No.62 and 64 of 2020.

It is settled principle of law that while seeking cancellation of bail the complainant [applicant] is required to demonstrate that the impugned order is perverse and illegal.

Perusal of impugned order reflects that bail was granted on the ground that there is civil dispute between the parties; offence is not falls within the prohibitory clause of section 497. Though learned counsel for the applicant relied upon the case laws reported in 2019 SCMR 1129 [Rana Abdul Khaliq Vs. The State & others] & 2009 SCMR 174 [Shameel Ahmeed Vs. The State], however, he is not in a position to controvert the factual position that there is civil dispute and legal position: the offences in not falls within the prohibitory clause. Primary ground of complainant [applicant], who is seeking cancellation is the quantum of amount as that is huge and accused persons failed to dishonor that cheques. On the plea of quantum: suffice to say that there is no justification to cancel the bail and set-aside impugned order. With regard to rider as imposed in order dated 09.01.2020 that applicant if failed to submit enhanced surety within 30 days bail stands recalled is not justified and time is extended. The applicant/accused persons shall furnish surety before the trial court within ten [10] days..

In view of above, Cr. Misc. Applications and Cr. Bail Application are disposed of. Office is directed to place copy of this order in all connected matters.

JUDGE