

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. B.A. No. S- 424 of 2019

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing of bail application.
Mr. Deedar Ali M. Chohan Advocate along with applicant.
Mr. Imtiaz Hussain Shahani, Associate of Mr. Muhammad Ibrhaim
Gambhir Advocate for complainant.
Mr. Abdul Rehman Kolachi, Deputy P.G for the State.

Date of Hearing: **06.12.2019**

Date of Order: **16-12-2019**

ORDER

Applicant/accused Nadeem Ahmed Abro seeks pre-arrest bail in
Crime No. 109 of 2019, registered at P.S, A-section, Khairpur for offence
under Section 489-F PPC.

2. Briefly, the facts of the prosecution case are that on 05.07.2019
complainant Abdul Fattah Abro lodged abovementioned FIR alleging
therein that he deals with the property business and one Nadeem
Ahmed Abro was working as broker, who was liable to pay the
outstanding amount to the complainant, for which Nadeem Ahmed
issued cheque, which was not cleared, as such he lodged an FIR bearing
Crime No. 329 of 2018 under Sections 489-F, 506/2, 34 PPC against said
Nadeem Ahmed and others, which was under proceeding in Court,
however, Nadeem Ahmed agreed to pay the said amount. Thereafter,

complainant in company of witnesses, namely, Zameer Hussain and Sadaqat Ali went to Gharib Nawaz Hotel, where accused Nadeem Abro came. An amount of Rs. 500,000/- was outstanding against Nadeem Ahmed, who issued one cheque to the complainant bearing No. AU-0028061 of account No. 5667-7 amounting to 250,000 of dated 07.05.2019 to be drawn at National Bank of Pakistan main branch Khairpur, however, on presentation of said cheque, it was dishonored, and such Memo was issued showing insufficient balance in the account. Complainant informed such facts to accused Nadeem Ahmed Abro and demanded money, but he did not pay the same. After obtaining order for registration of FIR from learned Justice of Peace, complainant appeared at P.S and lodged FIR as referred to above. After usual investigation, Challan was submitted against the accused.

3. Applicant applied for pre-arrest bail before learned Additional Sessions Judge-IV, Khairpur. The concession of interim pre-arrest bail was granted to the applicant, but the same was recalled by learned Additional Sessions Judge-IV, Khairpur vide order dated 05.08.2019.

4. Learned advocate for applicant mainly contended that the applicant is innocent and has falsely been implicated in this case due to mala fide intentions and ulterior motives; that the incident took place on 09.05.2019, whereas, order for registration of FIR was passed by

learned Justice of Peace on 25.06.2019, but the FIR was lodged after delay of 10-days on 05.07.2019, for which no plausible explanation has been furnished by the complainant; that in fact the applicant was broker of complainant and the dispute arose between them over settlement of accounts, as the complainant was not ready to settle the accounts with the applicant; that the leaves of the cheques of the applicant have been managed by the complainant as the applicant was broker of complainant, who was having leaves of cheques of the applicant; that the offence with which the applicant is charged does not fall within prohibitory clause of section 497 CrPC; that the Challan has been submitted and the applicant is no more required for investigation purpose; that the applicant has not misused the concession bail as he is regularly attending the trial Court as well as this Court after grant of interim pre-arrest bail by this Court. In support of his contentions, learned counsel relied upon cases of **Riaz Jafar Natiq v. Muhammad Nadeem Dar and others (2011 S C M R 1708)** and **Abu Bakar v. The State and others (2019 PCr.LJ Note 20)**.

5. Learned counsel appearing on behalf of complainant as well as learned Deputy P.G opposed the confirmation of interim pre-arrest bail earlier granted to the applicant by this Court on the ground that applicant had issued cheque dishonestly in connection with some obligation on his part which was dishonoured, as such the ingredients

of Section 489-F PPC are very much available. In support of his contentions, learned DPG relied upon the cases reported as **Shameel Ahmed v. The State (2009 SCMR 174), Muhammad Naseem v. The State (2012 PCr.LJ 918) and Muhammad Aslam v. The State (SBLR 2019 Sindh 1870).**

6. I have heard learned counsel for the applicant, learned counsel for the complainant as well as learned DPG for the State and gone through the material available on record. I am inclined to confirm interim pre-arrest bail already granted to the applicant by this Court for the reasons that there is inordinate delay of 10-days in lodgement of FIR, for which no plausible explanation has been set-forth by complainant, as such false implication of applicant after due deliberation and consultation cannot be ruled out. Moreover, perusal of record reflects that the complainant has admitted that the applicant was his broker, as such the contention of learned counsel for the applicant that the leaves of the cheques of the applicant were managed by the complainant, carries weight and same requires evidence. Moreover, the offence with which the applicant is charged does not fall within the prohibitory clause of Section 497 Cr.P.C. Furthermore, admittedly there is no complaint with regard to misuse of concession of interim bail by the applicant as he is attending the trial court regularly. Besides, investigation has been completed and Challan has been

submitted, as such applicant is no more required for further investigation.

7. In case of Riaz Jafar Natiq (supra), Hon'ble Supreme Court has been pleased to hold that "Thus keeping in view the law laid down in the case of **Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488)** ordaining that where a case falls within non-prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases". No exceptional circumstances are found in this case.

8. In view of above facts and circumstances of the case, the instant bail application No.S- 424 of 2019 stands allowed and the interim pre-arrest bail already granted to the applicant Nadeem Ahmed Abro by this Court vide order dated 09.08.2019 is hereby confirmed on same terms and conditions. The case-law relied upon by learned DPG for the State are not applicable to the case in hand being on distinguishable facts and circumstances.

9. Needless to say that the observations made hereinabove are tentative in nature. The trial Court shall not be influenced by such observations while deciding the case on merits.

JUDGE

Ahmed