

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

1st Cr. Bail Application No. S-740 of 2024

Applicant: Bashir Ahmed Ansari through
Mr. Mazhar Ali Mangan, Advocate.

Respondent: The State *through* Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

Complainant: Sikander Ali Veesar through
Mr. Suhail Ahmed Veesar, Advocate.

Date of hearing : 14.02.2025.
Date of decision : 18.02.2025.

ORDER

KHALID HUSSAIN SHAHANI, J.- Through instant bail application, the applicant seeks post arrest bail in FIR No. 181 of 2024, registered at Police Station Ratodero for offence under Section 489-F, PPC. His bail plea was firstly turned down by 1st Judicial Magistrate, Ratodero, being the trial Court, vide order dated 13.11.2024 and subsequently by the Additional Sessions Judge, Ratodero vide order dated 27.11.2024.

2. Applicant Bashir Ahmed Ansari is alleged to have issued a cheque bearing No.13990986, dated 15.3.2024 for Rs.14,15,200/- to Sikander Ali Veesar, the complainant in respect of certain transactions. The cheque, on presentation before the concerned bank was returned unpaid and as such dishonoured.

3. I have heard the learned Counsel for the applicant, learned Counsel for the complainant as well as learned Deputy Prosecutor General.

4. Learned counsel for the applicant has contended that the prosecution story is false; that the FIR is delayed by more than seven months without any cogent explanation; that the actual dispute between the parties is of civil nature, which needs to be adjudicated before the Court of competent jurisdiction; that previously also the complainant on 19.11.2023 had lodged an FIR being Crime

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No.149/2023 at PS Market, Larkana, for offence u/s 489-F, PPC against the applicant, which case was challaned and the applicant after facing full-dressed trial was acquitted of the charge vide judgment dated 21.10.2024; that the case against the applicant requires further enquiry and that the alleged offence does not fall within the prohibition contained under Section 497, Cr.P.C. In support of his contentions, learned Counsel for the applicant placed reliance on the case reported as *Sheikh Rehan Ahmed v. Judicial Magistrate-II, South Karachi & 2 others* (2019 MLD 636).

5. Learned Counsel for the complainant as well as learned Deputy Prosecutor General have opposed the application, contending that the applicant with a view to usurp the lawful dues of the complainant dishonestly issued false cheque in his favour, which was dishonoured by the concerned bank, therefore, the applicant is not entitled for concession of bail.

6. The complainant's version is that the applicant cheated him by issuing a false cheque, which on presentation before the concerned bank was dishonoured. Admittedly, there is more than seven months' delay in the lodging of FIR. It is also the case of prosecution that the applicant employed by him as Manager at his business owed some amount to him towards business transaction. The transaction at hand, *prima facie*, being a business transaction between the parties regarding money is to be decided before the competent civil court and at this stage it can only be presumed that the case was being painted criminally to harass the other party i.e. the applicant. The Supreme Court in the case of *Bashir Ahmed versus The State and others* (2023 SCMR 748) has been pleased to observe as under :-

"Then there is inordinate delay, which has not been explained, in registering the FIR. And, as yet no proof has been tendered to show that the amount of two million and two hundred thousand rupees was paid to the petitioner by the complainant. There is also no evidence, at this stage, with regard to the stated ingredients of section 489F of the 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 of further inquiry."

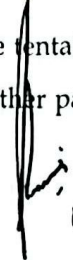
7. Apart from that, it also appears from the record that earlier the same complainant had lodged an FIR being Crime No.149/2023 at PS Market, Larkana, for offence u/s 489-F, PPC against the applicant, wherein the applicant after facing full-dressed trial was acquitted of the charge vide

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judgment dated 21.10.2024. The punishment prescribed under the law for offence under Section 489-F, PPC also does not fall within the prohibitory clause of section 497 Cr.PC. All this brings the case of the applicant within the ambit of further inquiry. Moreover, it is a settled principle of law that bail, in an offence not falling within the prohibitory clause is a rule whereas its denial is an exception.

8. For what has been discussed above, the applicant has made out his case for grant of bail. Accordingly, instant bail application is allowed. The applicant is directed to be released on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- & P.R. Bond in the like amount to the satisfaction of trial Court.

9. Needless to say that the observations made hereinabove are tentative in nature and shall not, in any way, affect the merits of the case of either party at the trial.


18/2/25
Judge