

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COU  
Crl. Bail Appln. No. S- 605 of 2016

Date of hearing	Order with signature of judge
03.03.2017.	

FOR HEARING.

Mr. Bahadur Ali Shahani, Advocate for applicant.  
Mr. Sobhraj L.P. Advocate for complainant.  
Mr. Sardar Ali Rizvi, A.P.G.

~~~~~

Through this bail application, applicant Asad Ali Shaikh has sought his admission on pre-arrest bail in Crime No.198/2016 registered with P.S Kamber City, for offence punishable under Sections 489-F, 506 (2) P.P.C.

The crux of prosecution case as unfolded in the F.I.R are that the complainant is grain merchant and he used to sale out the same to other agents against cash. The accused Asghar Shaikh had also purchased some 3500 mounds of paddy valued Rs.26,90000/- and issued cheque bearing No.10041511 dated 20.10.2015 for amounting to Rs.2,90,000/- to be encashed from the MCB, but when it was presented and the cheque was returned with cash memo on the ground of no funds were available. He again approached to accused, who issued other cheques bearing No.44869743 for amounting to Rs.800,000/-; third cheque No.44869744 amount to Rs.800,000/-; fourth cheque No.44869745 for amounting to Rs.800,000/- of Allied Bank for dated 07.12.2015 in presence of above witnesses. Out of above, two cheques were un-dated and un-named, for which accused asked that he will told to complainant for its encashment. The cheques were presented before the concerned bank and same were returned on the ground that no sufficient funds were available in the account of accused Asad Shaikh. Complainant remained in touch with accused, who kept him on false hopes and ultimately on 10.12.2015 has refused to pay amount in presence of

witnesses and issued threats to him, if he again make demand of the amount. Later, upon orders of this Court the above F.I.R was lodged.

Learned counsel for the applicants submits that the F.I.R is delayed for about a year but no plausible explanation has been furnished by the complainant for such an inordinate delay and offence with which the accused is charged does not exceed limits of prohibition as contained in Section 497 Cr.P.C. He however has not denied issuance of cheques in the transaction. In support of his contentions the learned counsel has relied upon the case of *Tarique Bashir and 4 others v. The State* (PLD 1995 S.C-34).

On the other hand Mr. Sobhraj L.P. Advocate for complainant has vehemently opposed the application and stated that the accused being fraudulent has committed fraud and deceived the complainant by usurping his huge amount, which is beyond expectations. He further submits that accused, who is ferocious persons has not come with clean hands and after filing of present application, he has also filed insolvency petition before the concerned Court and he has shown his apprehension that after grant of bail the accused would disappear and consequently the huge amount of the complainant will be ruined. He while concluding his arguments has proposed that surety amount be extended and obtained from the accused to the extent of amount involved in the case. Learned counsel lastly contends that even in respect of offences not falling within prohibitory clause of Section 497 Cr.P.C the Court may decline to admit an accused to bail, if there existed a recognized exceptional circumstances.

Learned APG appearing for the State contends that in cases under Section 489-F P.P.C not only presumption of innocence is missing but sufficient material is available to connect the accused with commission of crime and presumption of dishonestly is attached with drawer of dishonest negotiable instrument unless he can establish, for which the burden of proof has been placed on him and in such eventuality the

13/12

|

|

|

accused at-least be burdened with surety amount equivalent to the dishonored amount and therefore, he has not opposed the application subject to the enhancement of surety amount.

I have heard the arguments of both the parties and have gone through the material made available before me and found that the applicant/ accused has not rebutted or denied the transaction and even issuance of cheques in favor of the complainant throughout his pleadings. The incident is alleged to have taken place on 20.10.2015, but F.I.R thereof was lodged by the complainant on 06.10.2016 after about delay of one year. However, I am also conscious that the offence, which do not fall under the prohibitory clause of Section 497 Cr.P.C, the bail cannot be withheld as premature punishment.

In cases under Section 489-F P.P.C not only presumption of innocence is missing but there is sufficient material to connect an accused with the commission of crime for the reason that under Section 118 of "The Negotiable Instruments Act (XXVI of 1881)" every negotiable instrument until the contrary is proved is presumed to be drawn for consideration, whereas, under Section 489-F P.P.C presumption of dishonesty is attached with drawer of dishonest negotiable instrument unless he can establish, for which the burden of proof has been placed on him, that he had made arrangement with the bank to assure that the check would be honored and bank was at fault in not honoring the cheques and consequently, that better material could be available with the prosecution then a dishonest cheque to connect the accused with the commission of offence.

The growing tendency of issuing cheques without arranging sufficient funds to honor the instrument obviously with intent to make some quick money by defrauding others has destroyed fiber of society and created mistrust, not only the business community but the entire society and therefore, is to be viewed seriously.

13-17



It would, therefore, be safe to conclude that in absence of initial presumption of innocence in favor of an accused and availability of sufficient material in the form of dishonest instrument to connect such accused with the commission of offence, grant of bail "*as of rule*" can be no stretch of imagination be termed to be in consonance with the principle laid down in the case of *Tariq Bashir (supra)* and therefore, the Court should be strict in exercise of discretion of bail to a person charged with such offence.

Coming to the amount of surety, though, there is no provision providing the quantum of bail amount in respect of offence under Section 489-F P.P.C but keeping in view the purpose for which this section has been incorporated in the Pakistan Penal Code, which obviously appears to be not only to deter issuance of cheques to defraud the creditor but also to prevent the accused from disappearing by jumping the bail, in my view should be in consonance with the amount of instrument. The reference can be had from the case of *Shamraiz Khan v. The State* reported in **2000 SCMR 157**, in which learned Apex Court granted bail to an accused of misappropriation upon deposit of entire amount of which, the accused was charged of. Likewise, the Subsection (7) to Section 5 of the Offences in respect of banks (Special Courts) Ordinance, 1984, which provides speedy trial of certain offences committed in respect of banks or connected therewith, specifies that the bail amount should not be less than the amount specified in the charge. In the circumstances, I am of the considered view that bail amount in the cases of like nature, if not equivalent to the instrument should be in consonance with the dishonest instrument. However, the bail amount of Rs.100,000/- (already furnished by applicant) against disputed amount worth Rs.26,90,000/- out of which the instrument/cheques amounting to Rs.24,90,000/- for four cheques is highly disproportionate and therefore, in view of what has been discussed above instant bail application stands allowed and the interim pre arrest bail granting order dated 23.12.2016 is modified and confirmed subject to furnishing two fresh sureties by the applicant worth Rs.10,00,000/- (One million) each

| | |

and P.R bond in the like amount to the satisfaction of trial Court; however previous surety bond furnished on behalf of applicant before this Court shall be released after furnishing fresh sureties as directed above. In case, the bail amount as directed hereinabove is not furnished within a period of 20-days from today, the concession of bail shall stand cancelled automatically. Let copy of this order be sent to the trial Court through learned Sessions Judge, Kamber-Shahdadkot @ Kamber, for information and compliance.

The bail application stands disposed of in above terms.

Ansari \*