

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr.B.A.No.S- 231 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

23.4.2010.

Mr. Noor Ahmed Narejo, Advocate for applicant.
Mr. Shahid Shaikh, A.P.G.

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AQEEL AHMED ABBASI, J- On being aggrieved by the order passed by Ist Additional Sessions Judge, Mirpurkhas in Criminal Bail Application No.7/2010 U/s 489-F P.P.C. registered at Police Station Town Mirpurkhas on 08th March 2010 whereby bail application of the applicant was dismissed. The applicant has preferred the instant bail application U/s 497 Cr.P.C.

The facts in brief of instant bail application are that an F.I.R. in Crime No.7/2010 was registered at P.S Town Mirpurkhas on 13.1.2010 at about 2205 hours by complainant Muhammad Siddique U/s 489-F P.P.C., whereby the following offence was alleged:-

“Complaint is that I have got iron shop with name and style of Mehran Iron Store. Abdul Ghaffar Khan s/o Hayat Khan Pathan, owner Hussain Agirculture Engineering Work-shop Silore Shakh, District Mirpurkhas used to take articles on credit and make payment from time to time. I settled the account on 18.10.2007 and there came an amount of Rs.6,22,535/- outstanding against Abdul Ghaffar who, having made promise to make payment soon, went away. In result of constant contacts issued him a receipt No.1943 of Rs.100,000/- which was Rs.15000/- cash, TCs worth Rs.50,000/- and a cheque No.4644009 for Rs.35,000/- which was not honoured on its presentation before Bank. Later on contact he started avoiding and lastly gave a writing that he will pay amount in the month of December, 2008 but again disappeared. He again gave in writing to make payment on 10.3.2008 but did not pay money despite passing of due date. Thereafter, again in month of October 2009 he was met on contact who issued me a cheque No.060207/20.10.2009 in name of Mehran Iron Store pertaining to his A/c No.6557-5, being maintained in MCB Branch for Rs.5,57,535/-. The same bank account was closed and previous cheque of Rs.35,000/- was

also included in it. After 10/12 days i.e. on 02.11.2009 I deposited the cheque in MCB Bank for purpose of encashment but bank officials disclosed that his account is closed. I again tried to contact but he could not come in contact. He has dishonestly usurped my cash Rs.5,57,535/- malafidely and issued me false cheque. This cheque was giving in presence of Mohammad Akber and Ghulam Hussain. Justice be done.”

Investigation was made, the applicant/accused was arrested on 14.1.2010 whereafter he was released on 15.1.2010. After submission of Challan on 9.2.2010, he was again arrested on 10.2.2010. Charge has been framed and since then the applicant/accused is behind the bars.

It is inter alia contended by learned counsel for the applicant that applicant has been falsely implicated in the instant crime and the offence does not fall within the prohibitory clause hence the applicant is entitled for concession of bail as a matter of right. It is contended that even otherwise the amount alleged to have been attributed to the applicant though is a meager amount, the learned trial Court has dismissed the bail application without any justification. The learned counsel further submitted that the applicant had already reported the matter to the concerned police about missing of cheque book but the learned trial Court has not taken into consideration such fact. The learned counsel has placed reliance on the following cases:-

1. Saeed Abbas Vs. The State (2008 P.Cr.L.J 1104).
2. Muhammad Nadeem Vs. The State (2007 MLD 926).
3. Farrukh Hameed Vs. The State and another (2007 P.Cr.L.J 100).
4. Mian Muhammad Saeed Vs. The State (2005 MLD 1388).

The learned counsel has referred to above cases in order to show that under the similar circumstances, accused have been granted bail. Learned counsel further states that since this is a case of further inquiry and the amount alleged is a meager amount and the offence alleged does not fall within the prohibitory clause of Section 497 Cr.P.C, the applicant may be released on bail.

Conversely, the learned APG did not seriously object the grant of bail under the facts and circumstances of the case. However, he has pointed out that since the amount of Rs. 5,57,535/- is involved therefore, the bail may be granted subject to furnishing said surety amount in Court as surety.

I have heard learned counsel for the parties, perused the record as well as case law relied upon by learned counsel for the applicant.

It appears that allegation in the F.I.R. requires further inquiry into the matter and cannot be considered as free from doubt, moreover the offence does not fall within the prohibitory clause and accused has no previous history. Under such circumstances, the applicant/accused is entitled to the grant of concessionary relief by this Court. Under the circumstances, vide short order dated 23.4.2010, the applicant was admitted to bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Two lac) and P.R Bond in the like amount to the satisfaction of the trial Court with further direction that if the applicant/accused misuses the concession of grant of bail, the trial Court shall be at liberty to initiate proceedings for cancellation of bail as per law. These are the reasons for such short order.

Needless to observe that observations made hereinabove are tentative in nature and the trial Court shall not be prejudiced by any of such observation and shall decide the case on the basis of evidence available on record.

The bail application stands disposed of in the above terms.

JUDGE

Tufail