

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.375 of 2013

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing.

30.04.2013

Mr. Kanwar Altaf Bhatti, Advocate for the Applicant
Ms. Sheeraz Iqbal Chaudhri, Standing Counsel

Naimatullah Phulpoto, J.--- Applicant/accused Ahmed Khan seeks bail in Crime No.01/2013, registered at F.I.A., C.B.C., Karachi against the applicant/accused and others on 01.02.2013 under sections 419/420/468/109 PPC.

Brief facts of the prosecution case as disclosed in the F.I.R. are that Mr. Saad Qureshi, Manager, M.C.B., Badar Commercial Branch, Karachi, made a written complaint to the Additional Director, Federal Investigation Agency, Karachi, alleging therein that applicant/accused Ahmed Khan holding CNIC No.43101-8373081-7, appeared at Badar Commercial Branch on 30.01.2013 at 10:15 a.m. and presented a Cheque for PKR 200,000/- drawn on Account No.1000147 of Mst. Fozia Ahmed wife of Saghir Ahmed over the counter for payment. Manager was standing over the counter as usual. Cheque was presented to him as the customer was known to the Manager, he called customer to obtain the C.B.C. for confirmation of the cheque to which she refused and informed the Manager that she has not issued any cheque. Manager requested the client to visit the Manager along with her cheque book immediately and she reached in the Branch within 15 months. Applicant/accused was not allowed to leave the Branch. The customer came to the branch and sought instrument and confirmed that she has not issued such cheque. On inquiry from the

applicant/accused Mst. Fouzia it was noted that a cheque of Rs.100,000/- was also got encashed on 29.01.2013 by the same person and received the amount thereof. Manager inquired from the applicant/accused Ahmed Khan for such fraud. He replied that one of his friends had given him the said cheque and requested him to get the same encashed. Custody of the applicant/accused was handed over by the Manager, M.C.B. to the area police and F.I.R. against the aforesaid applicant/accused was lodged against him and after usual investigation challan was submitted under Sections 419/420/468/109 PPC.

Bail application was moved against the applicant/accused before the Special Court (Offences in respect of Banks) Sindh at Karachi, the same was rejected vide order dated 13.03.2013 for the following reasons:

“While examining the F.I.R. and charge sheet it shows that accused Ahmed Khan presented a cheque amounting to Rs.2 lacs in the account of Mst. Fouzia Ahmed account holder MCB Badar Commercial Branch, Karachi but complainant suspected in the cheque therefore he called account holder in the branch and she disclosed that she has not issued such cheque therefore accused was apprehended at the spot. The accusation against accused has been found by the I.O. during the investigation as he was arrested on spot while making an attempt for encashing the alleged cheque. I do not find any mala fide of the I.O. or complainant in the case whereas the grant of bail to co-accused Syed Shafaqat Ali Qadri was on the ground that neither his name was appearing in the F.I.R. nor he was apprehended along with accused in the said branch. In the above circumstances and reasons I am of the view that there are reasonable grounds to refuse bail of accused. Accordingly bail application of accused Ahmed Khan is hereby dismissed.”

Mr. Kanwar Altaf Bhatti, learned advocate for the applicant/accused mainly argued that applicant/accused was not beneficiary, simply he had presented cheque given to him by his friend. Applicant/accused is no more required for investigation. Case has already been challaned. Co-accused has been granted bail and case of applicant is identical.

Ms. Sheeraz Iqbal Chaudhry, learned standing counsel argued that cheque was presented by the applicant/accused in fraudulent way and applicant/accused was caught red handed and alleged cheque was recovered from his possession. Sufficient material has been collected against applicant/accused during investigation and he is not entitled for concession of bail. Case of co-accused was not identical to present applicant/accused, as cheque was presented by present accused and he was arrested in Bank.

We have carefully heard the learned counsel for the parties, perused the contents of the F.I.R. and other material collected against applicant/accused during investigation.

Prima facie, it is established that applicant/accused has presented the cheque for Rs.200,000/- drawn on account No.1000147 of Mst. Fouzia Ahmed over counter for payment. Manager called Mst. Fouzia Ahmed, she informed that said cheque has not been issued by her. Contention of learned counsel for the applicant/accused Ahmed Khan that cheque was given to the applicant/accused by his friend to get the same encashed, such defence plea can only be determined by the trial Court. Principle of rule of consistency is not applicable in the case of applicant/accused for the reason that case of co-accused Syed Shafqat Ali is distinguishable from the case of present accused for the reasons that applicant/accused had presented cheque in Bank he was arrested in Bank and cheque was recovered from him. This Court has only to see tentative material available on record. Reliance is placed upon the case of Mrs. Riaz Qayyum Vs. The State (2004 SCMR 1889), in which it is held as under:-

“It is settled principle of law that an elaborate sifting of evidence cannot be made at the time of deciding bail application but only tentative assessment of the same is to be made. Thus, prima facie there appears to be a reasonable ground disentitling the petitioner’s husband, namely, Khalifa Abdul Qayyum, to the concession of bail.”

Thus prima facie there appear to be reasonable grounds to connect the applicant/accused Ahmed Khan in this case, hence he is not entitled for grant of bail, consequently, bail application is dismissed, with direction to trial Court to decide the case expeditiously.

Needless to mention here that observations made herein above are tentative in nature, learned Special Judge (Offences in respect of Banks) Sindh at Karachi shall not be influenced by such observations while deciding the case on merits.

JUDGE

JUDGE

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