

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Cr. Bail Application No. S- 592 of 2020

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**DATED**                      **ORDER WITH SIGNATURE OF JUDGE**

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For orders on office objection.

For hearing of main case.

24.08.2020

Applicant Shah Zaman Ashraf is present on interim bail.

Mr. Muhammad Rahim Gaju, Advocate files power on behalf of applicant, which is taken on record.

Mr. Ayaz Hussain Tunio, Advocate for complainant.

Ms. Rameshan Oad, Asst. Prosecutor General.

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**ABDUL MAALIK GADDI, J-** Through this bail application, applicant Shah Zaman Ashraf s/o Muhammad Ashraf Ansari seeks pre-arrest bail in crime No.42 of 2020 registered U/S 489-F, 506/2, 420, 34 PPC at Police Station Cantonment, Hyderabad. Earlier, applicant had filed Cr. bail application before the trial court for grant of bail but the same was dismissed vide order dated 23.06.2020.

2. Precisely, facts of the case are that applicant has purchased tiles from complainant and in this regard issued a cheque amounting to Rs.6,00,000/- [Rupees Six Lac] for dated 11.05.2020 of his account existing in Bank Al-Habib Limited Cantonment Branch to the complainant however, when the said cheque was presented for its encashment by the complainant in his account, the same was bounced/ dishonoured.

3. Learned counsel for the applicant / accused argued that applicant / accused is innocent and has falsely been involved in this case; that there is no business relationship existing between the parties; that applicant / accused has purchased tiles from different dealers and only a meeting was held with the complainant; that applicant had filed Suit for Declaration, Cancellation, Rendition of Amount as well as Permanent

injunction against the complainant and in order to pressurize the applicant the complainant lodged instant F.I.R; that offence with which the applicant stands charged does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C and the dispute between the parties is of civil nature, therefore, he prays for confirmation of interim bail.

4. Learned A.P.G assisted by learned counsel for the complainant has opposed the bail application on the ground that the accused is involved in a case of forgery and cheating; that the accused is nominated in F.I.R with specific role therefore, he is not entitled for concession of extra ordinary relief of pre-arrest bail. In support of her contention she relied upon the case of **Rana Abdul Khaliq V The State and others** (2019 SCMR 1129).

5. I have heard the arguments of learned counsel for the parties and perused the case papers available on record. It appears from the record that case has already been challaned and applicant / accused is no more required for investigation. The allegation against the applicant is that he issued a cheque amounting to Rs.600,000/- [Rupees Six Lac] and when the said cheque was presented for its encashment before the concerned bank, the same was bounced/dishonoured. It is stated by learned counsel for the applicant that there was no business transaction in between the parties and according to him, the applicant did not issue any cheque but the alleged cheque was misplaced and the same was misused by the complainant hence, it is yet to be determined at the time of trial whether the applicant had issued the alleged cheque to the complainant in a good faith or otherwise.

6. It is noted that alleged incident took place on 02.05.2020 whereas the F.I.R was lodged on 22.05.2020 after the delay of twenty (20) days which has not been plausibly explained by the complainant therefore, possibility of false implication of the applicant in this case cannot be ruled out.

7. As observed above, the case has been challaned therefore, sending the applicant to jail would not serve the purpose and it

is expected that the trial Court shall decide the case as early as possible. Besides, the punishment of the alleged offence also do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. In such circumstances, grant of bail to an accused is a rule and its refusal is an exception. There is no exceptional circumstance appear to with hold the bail to applicant / accused in this case and in this regard I am fortified with the case of **Tarique Bashir & five others v. The State** reported as [PLD 1995 Supreme Court page 34]. In the said context, reference can also be made to the case of **Muhammad Tanveer v. The State & another** reported as [PLD 2017 Supreme Court page 733].

8. In the instant case there is no question of recovery of cheque in dispute as the same is already with the complainant, therefore, just for the purpose of sending the accused to jail without any further investigation the bail before arrest in the circumstances of this case cannot be refused when no further investigation is to be made and the challan already stands submitted with the trial Court. Further, it would not be out of place to mention here that the object of section 489-F P.P.C. is not to effect recovery of amount under the cheque and for that matter the complainant has to approach the Court of competent jurisdiction.

9. Needless to mention here that prima facie mere issuance of cheque which is subsequently dishonoured does not constitute an offence under section 489-F PPC unless it is proved that the same was issued with dishonest intention; for repayment of loan or discharging of any obligation; all ingredients are required to be proved during trial, till then case of applicant call for further enquiry.

10. Record further reflects that applicant is first offender and is not said to have been convicted in any other criminal case. However, it is contended by the counsel for complainant that applicant had purchased tiles from complainant and issued a cheque which was dishonoured at the time of encashment and due to which complainant suffers loss to his business, as such, if bail is confirmed to the applicant then surety amount may be

enhanced which has not been opposed by the learned counsel for the applicant.

11. In view of the above, I have come to the conclusion that the case of applicant falls within the scope of Sub-section (2) of Section 497 Cr.P.C, as such, the interim pre-arrest bail already granted to the applicant vide order dated 29.06.2020, is hereby confirmed however, subject to depositing of an additional security / surety equivalent to the amount of subject cheque i.e. Rs.6,00,000/- (Rupees six hundred thousand only) along with P.R Bond in the like amount to the satisfaction of trial Court which shall not be returned until trial would not be concluded and in case the applicant fails to deposit the said security amount before trial Court within ten (10) days from the receipt of this order, and / or misuses the concession of bail in any manner, then trial Court is fully authorized to take action against applicant and his surety including cancellation of bail without making any reference to this Court.

12. As regard the case law cited by learned A.P.G, Sindh, the facts of the same are quite distinguishable to the case in hand, thus did not find helpful to the prosecution in this case at this stage. Further, the precedents in bail matters are of no help to a party, as it varied from case to case depending upon the facts of each case. The Court has to examine as to whether applicant has made out a case of further inquiry or not. In this context I am fortified by the case of **Muhammad Faiz alias Bhoora V The State and another** (2015 SCMR 655).

13. Needless to mention here that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial of this case.

14. Office is directed to communicate this order to the trial Court immediately for information and compliance.

**JUDGE**

**\*Hafiz Fahad\***