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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

BBA Petition no. 17/04 of 2024

Hazratullah Versus The State

Order--08

Accused/petitioner on ad-interim bail with counsel present.

04.04.2024

Sr.PP for the State is present.

Complainant with counsel present.

Hzaratullah s/o Khaniwadaad resident of Mishti Subsection Mamizai Village Anjali, the accused/petitioner, seeks confirmation of his pre-arrest bail in case FIR No. 07 dated 15.03.2024 under section 489-F PPC of Mishti Mela, Police Station, Orakzai.

Concise facts of the case are that Abbas Ghulam, the complainant, has lodged the report that he was a contractor by profession; that contract was approved in favour of Umar Siddique and Hazratullah in 2020, which was purchased by him in sum of Rs. 2,800,000/- from them; that on completion of contract within a period of two years, Umar Siddique has paid him an amount of Rs. 1,870,000/-, whereas, promised to pay the balance amount; that a jirga was convened between them, whereby, he has agreed to pay the balance amount of Rs. 1,088,984/- on 12.10.2021, however, they have delayed the payment and finally issued cheque of Rs. 720,000/- on 26.08.2023; that when the cheque was presented to the concerned bank for encashment on different dates, it was dishonored each time due to insufficient amount in the account; therefore, he has charged Umar Siddique and Haratullah for the dishonest issuance of cheque, hence, the FIR.

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Abdul Basit
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Arguments heard. Record perused.

04.04.2024

Perusal of the record reveals that complainant has charged the accused/petitioner for dishonest issuance of cheque on account of contract transaction between them; however, the whole record is silent about any contract or transaction between complainant and the accused/petitioner. Besides, the original cheque in question has not been brought on record through recovery memo nor the site plan has been prepared so far. The bank report provides that when cheque was presented to them, it was missing the stamp necessary for encashment of money, which is necessary where the account is in the name of company etc. and so questions the validity of cheque. Importantly, accused/petitioner submitted his service card, who is public servant serving in the Wildlife Department, whereas, there is admittedly no record on file disclosing delivery of cheque by him to complainant towards the repayment of any dues etc. in connection with any contract or deal. At present there is no record that title of the account was in the name of accused/petitioner. Even, complainant has also not attributed the issuance of cheque to accused/petitioner but to his brother, which not only apprehends false implication but also reflects that complainant has actually intended to charge brother of accused/petitioner but included his name in the case to pressurize his brother in order to procure the alleged money, which does not rule out any probability of malafide on part of complainant with ulterior motive. The local police has also not succeeded to brought on file any incriminating material against the accused/petitioner, which fact coupled with facts discussed above make it a case of further inquiry. Even, the offence also does not fall within the restrictive clause of section

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Contd. 08 497 Cr.PC; thus, refusal of pre-arrest bail to accused/petitioner or
04.04.2024 sending him behind the bars for above discussed reasons would
serve no useful purpose except to bring humiliation to him as end
result would be bail.

Importantly consideration for grant of pre-arrest bail are not
at all are different from the considerations for grant of post arrest
bail, as far as merits of the case are concerned. The only difference
is that there must be additional basis of humiliations, harassment,
malafide, intention to disgrace and dishonor. If a person is
otherwise entitled to bail, no useful purpose shall be served by
putting him firstly behind bars and then allowing him bail. Court
has to keep a balance, therefore, if a fit case for grant of bail is
made out, bail before arrest can be allowed in appropriate cases
(the wisdom is drawn from case law reported in 2012 PCrLJ 430
[Sindh]). Similarly arrest for ulterior motives such as humiliation
and unjustified harassment is a valid consideration for grant of pre-
arrest bail.

Besides, accused/petitioner has joined the investigation and
he is no more required for further investigation; therefore, on the
acceptance of the application in hands, bail before arrest of the
accused/petitioner is confirmed on the existing bonds. Copy of
this order is placed on police and judicial files for record.

Record is returned to the quarter concerned and file of this
court consigned to record room after completion and compilation.

Announced
04.04.2024


(Abdul Basit)
Additional Sessions Judge-II,
Orakzai