

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. Crl. Misc. No.18392-B/2024

Syed Muhammad Ali vs **The State and another**

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary
--------------------	--------------------------	---

19.04.2024 Mr.Zabi Ullah Nagra, Advocate for the petitioner.
Ms.Aasia Yaseen, Deputy District Public Prosecutor for the State with Javaid, A.S.I./I.O. and record of the case.
Mr. Amjad Iqbal Khan, Advocate for the complainant/respondent No.2.

Through instant petition, Syed Muhammad Ali (petitioner/accused) has sought post-arrest bail in case arising out of F.I.R. No.1042/2024 dated: 03.02.2024 registered under Section: 489-F PPC at Police Station: Raiwind City, District: Lahore.

2. After hearing learned counsel for the parties, learned Deputy District Public Prosecutor and going through the available record with their able assistance, it has been noticed that briefly, as per Crime Report (F.I.R.) got recorded by Syed Tallat Imran (complainant), he had to take Rs.32,00,000/- (Rupees thirty two hundred thousands only) from Syed Muhammad Ali (accused in the case, now petitioner) and he (present petitioner) issued cheque of Rs.32,00,000/- to the complainant which was dishonoured on presentation by the bank.

Undeniably, Section: 489-F PPC was brought on the statute for the purpose of awarding punishment to the person, who issues the cheque dishonestly for repayment of a loan or fulfilment of an “obligation”, which is dishonoured on presentation; for the purpose of ready reference, Section: 489-F PPC is hereby reproduced: -

***“489-F PPC** Dishonestly issuing a cheque.--Whoever dishonestly issues a cheque towards re-payment of a loan or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque.”* **(emphasis added)**

Bare perusal of aforementioned provision of law reflects that for invoking Section: 489-F PPC, mere issuance of cheque or its dishonouring is not sufficient rather first of all it will have to be proved as a “must” that cheque was issued for repayment of loan or fulfilment of obligation, meaning thereby that there must be material available on the record to show loan or obligation.

On Court’s query, learned Deputy District Public Prosecutor under instructions of investigating officer of the case (present before the Court) and after

herself going through available record apprises that though it is mentioned in the first information report that complainant had to take Rs.32,00,000/- from the petitioner yet during entire investigation of the case, it has not come on the record that when, before whom and for which reason as well as for what purpose, said amount was given by the complainant to the petitioner and how it was due to complainant from the petitioner, therefore, applicability of Section: 489-F PPC in this case itself requires further probe/inquiry within the purview of sub-Section (2) of Section: 497 Cr.P.C.

It goes without saying that Section: 489-F PPC was not brought on the statute for using the same as a tool for recovery of the amount rather for the purpose of awarding punishment to the person, who issues the cheque dishonestly for payment of a loan or fulfilment of an “obligation”, which is dishonoured on presentation. Although cheque involving huge amount has been dishonoured in the case yet punishment for the offence under Section: 489-F PPC is three years, or fine, or both and of course said punishment does not fall within the ambit of prohibition contained in Section: 497 Cr.P.C.; grant of bail in such like cases is a rule and refusal is an exception.

Though it is contention of learned Deputy District Public Prosecutor that case was registered on 03.02.2024, non-bailable warrants of arrest of the petitioner were issued on 08.02.2024, proclamation against him was issued on 15.02.2024 whereas challan report under Section 173 Cr.P.C. for proceedings under Section: 512 Cr.P.C. was submitted on 17.02.2024 yet at the same time apprises that petitioner was arrested in this case on 08.03.2024 and sent to jail on 09.03.2024 where he is confined till now. Since proclamation was issued on 15.02.2024, and period in the proclamation for appearance of the accused cannot be less than 30 days as per statute and admittedly petitioner was arrested on 08.03.2024 i.e. before expiry of said period, therefore, he cannot be termed as proclaimed offender; in this regard, case of **“Waheed alias Naheed versus The State and another”** (2013 YLR 335) and **“Nasir Khan and others versus State and another”** {PLJ 2014 Cr.C. (Lahore) 659 (DB)}

Even otherwise, if Court has come to the conclusion that case of the prosecution against the accused requires further probe/inquiry, then bail is granted to him as of right and same cannot be withheld due to abscondance; in this regard, case of **“QAMAR alias MITHO versus THE STATE and others”** (PLD 2012 Supreme Court 222), **“CHAIRMAN NAB through PGA NAB Islamabad versus MUHAMMAD KHALID”** (2016 SCMR 676), **“MUKARAM versus The STATE and another”** (2020 SCMR 956) and **“SAEED YOUSAF versus**

The STATE and another” (2021 SCMR 1295), “SAAD ZIA versus The STATE and others” (2023 SCMR 1898) and “ABDUL RASHEED versus The STATE and another” (2023 SCMR 1948) can be advantageously referred.

Petitioner was arrested in the case on 08.03.2024 and sent to jail on 09.03.2024 where he is confined till now. Mere detention of the petitioner in jail would serve no useful purpose to the case of prosecution. It is trite law that bail cannot be withheld as advance punishment.

3. When all aforementioned factors are taken into consideration in totality, then case for grant of post-arrest bail to the petitioner/accused has been made out. Therefore, instant petition filed by the petitioner is **accepted/allowed** and he is admitted to post-arrest bail in the case subject to his furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five hundred thousand only) with two sureties each in the like amount to the satisfaction of learned trial court.

4. It goes without saying that observations mentioned above are just tentative in nature, strictly confined to the disposal of instant bail petition and will have no bearing upon trial of the case, which will be concluded on its own merits by the trial court expeditiously. Needless to add that if petitioner or any other person acting on his behalf creates any hurdle in the way of conclusion of trial, then complainant as well as the State would be at liberty to move for recalling of this order.

**(Farooq Haider)
Judge**

APPROVED FOR REPORTING.

**(Farooq Haider)
Judge**

This order has been dictated,
pronounced, prepared and signed
on 19.04.2024.

*Iftikhar**