

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 47-B/2020

Tariq Masood
Versus
The State and another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(02)	31.01.2020	Mr. S.A. Mahmood Khan Saddozai, Advocate alongwith with petitioner. Mr. Rizwan Baari, Advocate alongwith the complainant. Hafiz Malik Mazhar Javed, State Counsel. Ch. Nadeem Tahir, S.I. with record.

Through this petition, petitioner seeks bail before arrest, in the case F.I.R. No. 484/2019, dated 17.12.2019, offence under Section 489-F P.P.C., registered at Police Station Ramna, Islamabad, alleging therein that the petitioner has issued a cheque of Rs. 550,00,000/- (five cror and fifty lac) and the same was dishonoured.

2. The petitioner moved application for grant of pre-arrest bail before the learned Additional Sessions Judge (West), Islamabad, which was dismissed vide order dated 15.01.2020, hence the instant petition.

3. Learned counsel for the petitioner, inter alia, contended that the petitioner has been falsely involved in this case; that the dispute between the parties is purely of civil nature being based on the terms and conditions of an agreement and the petitioner has already filed a civil suit for cancellation of the said cheque, which is pending adjudication before the competent Court of law. Learned counsel further contended that the alleged offence is not attracted against the petitioner and the offence under

Section 489-F PPC does not fall within the prohibitory clause.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant contended that the petitioner is a habitual offender and he is involved in other cases of similar nature, therefore, is not entitled for grant of pre-arrest bail.

5. Arguments heard, record perused with the able assistance of the learned counsel for the parties.

6. Perusal of the record reveals that the petitioner and respondent No.2 entered into a sale agreement dated 14.12.2017, with respect to industrial plots bearing Nos. 337, 338, 353 & 354, situated at Sector I-9 Industrial Area, Islamabad, for total sale consideration of Rs. 380,000,000/- (thirty eight crore) and as part performance of the agreement, the keys of the plots were handed over to respondent No.2, who could not arrange the amount within the stipulated time. As per the petitioner on 24.07.2019, he was called at a place deceitfully, instead of complying with the terms and conditions of the said agreement, he was pressurized and got his signatures on the cheques and the agreement under threats. The petitioner approached the local police and then filed suit for cancellation of Cheques and the Agreement, dated 24.07.2019.

7. The record further reveals that the petitioner has also filed a private complaint against respondent No.2/ complainant, which is pending before the relevant Court of competent jurisdiction. The record further reveals that

the petitioner being the Chief Executive Director, M/S British Biscuits (Pvt.) limited, entered into a sale agreement on 14.12.2017 of plots against consideration of Rs.380,000,000/- (thirty eight cror), received an amount of 1% of the total sale consideration, which becomes Rs.38,00,000/- (thirty eight lac) and the remaining amount of Rs.3,82,00,000/- (three cror eighty two lac) was also received by the petitioner on 15.12.2017. The contents of agreement dated 14.12.2017 reveals that there were disputes regarding sale of plots and litigation was pending in the Hon'ble High Court, Hon'ble Supreme Court and other different Courts. Another agreement dated 21.07.019 executed on 24.07.2019, which is found at page number 22 of the petition where it has been stated in para 7 of the agreement that respondent No.2 was ready for cancellation of the agreement on the condition of return of his paid amount. The dispute in between the parties was that the petitioner is the owner of above mentioned plots which were sold out to respondent No.2 in consideration of Rs.380,000,000/- (thirty eight cror). Later on, dispute arose in between the parties. The agreement in between the parties was also executed which is at page No.21 of the petition. Keys of the plots had been given to respondent No.2. Initially when respondent No.2 could not pay the total amount on account that the said plots were not free from encumbrances as the CDA had also some objection over the subject plots. On the other hand, the contention of the petitioner is that respondent No.2 was given the keys

of the plots and he was utilizing the same for a long term, otherwise the petitioner was earning lacs of rupees per month from each plot on rent basis. In this manner, respondent No.2 is under obligation to pay an amount of Rs. 6,50,00,000/- (six cror fifty lac) to the petitioner for utilization of the plots under his control. The petitioner has also filed a suit for declaration, cancellation of agreement and the cheques dated 24.10.2019 and 24.02.2020, which is pending before the Court of learned Civil Judge, Islamabad, as well as a complaint under Section 200 Cr.P.C., copy of which is annexed at page No. 34 of the petition.

8. Admittedly, the petitioner is owner of the plots. The contentions of the parties and perusal of record reveals that basically there is dispute of money in between the parties and it is a matter of rendition of accounts between the parties. On the other hand, the basic ingredients for constituting the offence under Section 489-F P.P.C, prima facie, are lacking in the instant case.

9. It is an admitted position that the petitioner did not issue the cheques on account of repayment of loan, hence the case of the petitioner falls within the ambit of further inquiry, falling within the parameters of the Section 497(2) of Cr.P.C. The punishment of the said offence is three (03) years, which does not fall within the prohibitory clause of Section 497(1) of Cr.P.C. Reliance in this regard is place on the judgment of the Hon'ble Supreme Court of Pakistan reported as **"Riaz Jafar**

Natig Vs. Muhammad Nadeem Dar and others

(2011 SCMR 1708), where in it has been held as under:-

"Allegation against accused was that he issued a cheque for a sum of Rs. 20 million, which was dishonoured on presenting in bank---Effect---Where a case fell within non prohibitory clause of Section 497 Cr.P.C the concession of granting bail must be favorably considered and should only be denied in exceptional cases."

In another case reported as **"Abu Bakar Vs. The State and others"** (2019 P.Cr.L.J. Note 20), this Court has held as under:-

"Huge amount of cheque did not expand provision of law and brought changes in statute---Bail was allowed in circumstance."

10. Resultantly, this petition is **allowed** and ad-interim pre-arrest bail already granted to the petitioner by this Court vide order dated 23.01.2020, is hereby confirmed on bail bonds already furnishehd by the petitioner.

11. Petitioner shall appear before the learned Trial Court on each and every date of hearing.

12. It is, however, clarified that the observations made herein above are just tentative in nature and strictly confined to the disposal of this bail petition

(GHULAM AZAM QAMBRANI)
JUDGE 

A. Rahman Abbasi