

Form No: HCJD/C-121.
ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No.637/B of 2020

**Usman Habib Khan
VS
The State & another**

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21.04.2020.	Syed Khawar Ameer Bukhari, Advocate for the petitioner. Mr. Toufeeq-ul-Irfan Asif, learned State Counsel. Respondent No.2, in person. G. Abbas Khan, ASI.
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The petitioner, Usman Habib Khan
S/o Sardar Muhammad Habib Khan, seeks bail
after arrest in case F.I.R. No.349, dated
19.10.2019, under Section 489-F P.P.C., Police
Station Shalimar, Islamabad.

2. The case of the prosecution against
the petitioner is that on the complaint of
respondent No.2, the aforementioned F.I.R.
was registered; it was alleged in the complaint
that the petitioner was given Rs.16,00,000/-
for the purposes of Hajj as he worked as a
travel agent, however, the petitioner failed to
fulfill the obligations and when the amount, in
question, was demanded he tendered a cheque
in sum of Rs.12,60,000/-, which when was
presented for payment was dishonoured.

3. The petitioner applied for bail after
arrest, which was dismissed by the learned
Judicial Magistrate, vide order dated

03.02.2020. Application before the Sessions Judge was also dismissed, vide order dated 18.02.2020.

4. It is pertinent to observe that the instant petition is the second one on the subject as the earlier petition was disposed of as having become infructuous in light of the order passed by the Hon'ble Chief Justice of this Court granting bail after arrest to all the under trial prisoners implicated in offences carrying sentences less than three years, however, subsequently, the said order was set-aside by the august Apex Court; hence the instant petition.

5. Learned counsel for the petitioner, *inter-alia*, contended that the allegations as levelled against the petitioner are not correct inasmuch as the persons with respect to whom the payment was made have performed the Hajj; the cheque was tendered as a guarantee cheque. It was further argued that the offence, in question, is non-prohibitory and in such like cases grant of bail is a rule; that the investigation stands concluded and the petitioner is not required for further investigation. Learned counsel also submitted that the case against the petitioner is one of further inquiry as the persons have performed Hajj.

6. Learned State Counsel alongwith respondent No.2 in person, *inter-alia*, contended that in the investigation the petitioner has been found guilty; that the cheque was tendered to the complainant by the petitioner and bears the signature of the petitioner, in such facts and circumstances the bail should be refused.

7. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

8. The petitioner is implicated with an offence under Section 489-F P.P.C., which does not fall within the prohibitory clause as provided in Section 497 Cr.P.C. In such like cases grant of bail is a rule and refusal is an exception. Reliance is placed on case reported "*Tariq Bashir Vs. The State*" (**PLD 1995 SC 34**).The exceptions enumerated in the said judgment are not attracted in the facts and circumstances of the case. In this behalf, though it was argued on behalf of the respondents that there are about six other cases of similar nature against the petitioner, however, in light of the dictum of the august Apex Court in "*Qurban Ali Vs. The State and others*" (**2017 SCMR 279**), mere pendency of the cases or FIRs is no ground for refusal of bail, unless there is conviction in the same.

9. It is the stance of the petitioner that the persons, who made the payment have performed Hajj and the cheque tendered was a guarantee cheque, which fact was not categorically denied by respondent No.2 and during the course of arguments, he admitted that the cheque was a guarantee cheque. The referred fact makes the case against the petitioner one of further inquiry. Moreover, the investigation stands completed and report under Section 173 Cr.P.C has been filed and the continued incarceration of the petitioner shall serve no purpose.

10. For what has been stated above, the instant application is **allowed** and the petitioner is admitted to bail after arrest in the abovementioned FIR subject to furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees One Hundred Thousand Only) with one (01) surety in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned Trial Court at the time of trial.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua