

Form No: HCJD/C-121.

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No. 649/B of 2019

Zafar Ullah
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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13.11.2019.	Mr. Majid Ahmed Abbasi, Advocate for petitioner. Ch. Naeem Ali Gujjar, Advocate for complainant/respondent No.2. Malik Awais Haider, State Counsel. M. Shahbaz, ASI.
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Through the instant petition, the petitioner [Zafar Ullah] seeks bail after arrest in case FIR No. 353/2019, dated 07.08.2019, under Section 489-F PPC, Police Station Koral, Islamabad.

2. The case of prosecution against the petitioner is that on complaint of respondent No.2, an FIR was lodged, wherein it was alleged that on account of settlement between the parties the petitioner tendered a cheque drawn on Bank Alfalah Ghauri Town amounting to Rs. 50,00,000/- on 05.05.2019 which when was presented for payment was dishonored.

3. The petitioner applied for bail after arrest before the Judicial Magistrate, Islamabad which was dismissed vide order dated 14.09.2019; application for bail after

arrest filed before Sessions Court, Islamabad, was dismissed vide order dated 26.09.2019 by the learned Additional Sessions Judge, Islamabad, hence the petition.

4. Learned counsel for the petitioner, *inter alia*, contended that the dispute between the parties pertain to the properties and since respondent No.2 did not provide *Fard*, the cheque was not supposed to be encashed. It was further contended that since the cheque was for a future obligation, the same cannot on basis for an offence under section 489-F PPC as has been held by the Hon'ble Supreme Court of Pakistan in case reported as **"Mian Allah Ditta vs. The State and others" (2013 SCMR 51)**. It was further contended that the case against the petitioner is one of further inquiry and the investigation stands completed.

5. Learned State Counsel alongwith the counsel for the complainant, *inter alia*, contended that there are numerous FIRs against the petitioner; that the cheque was tendered consequent to the settlement between the parties; that during the investigation the petitioner has been found guilty.

6. Arguments advanced by the learned counsels for the parties have been heard and record perused with their able assistance.

7. The petitioner has been implicated with an offence under Section 489-F P.P.C; the referred offence does not fall within the prohibitory clause of Section 497 Cr.P.C and in such like cases grant of bail is a rule and refusal is an exception. Reliance is placed on case reported as "**Tariq Bashir vs. The State**" (PLD 1995 SC 34). The circumstances mentioned in the referred judgment are not attracted in the instant case. Though it was stated on behalf of the State that there are various FIRs of similar nature against the petitioner, however none has culminated in conviction and in light of the judgment of the Hon'ble Supreme Court of Pakistan in case reported as "**Qurban Ali Vs. The State and others**" (2017 SCMR 279) the mere registration of the FIRs is inconsequential. The investigation stands concluded and the petitioner is not further required for the same. The report under Section 173 Cr.P.C has been filed.

9. In view of above, the instant petition is allowed and the petitioner is

admitted to bail after arrest in the above mentioned case subject to furnishing bail bonds in sum of Rs.2,00,000/- 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

Shakeel Afzal