

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

Criminal Misc. No. 979/2020
Zubair Elahi
Versus
The State, etc.

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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30.09.2020	Rao Muhammad Sarfraz Advocate for petitioner, Syed Shahbaz Shah, State Counsel, Mr. Muhammad Daud, Advocate for complainant, Ameer Ali ASI with record.
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This is post-arrest bail petition by accused/petitioner (Zubair Elahi) in F.I.R No. 12, dated 11.01.2020, under Section 489-F PPC, Police Station Ramna, Islamabad.

2. Briefly, the allegation set-forth in the FIR is that the complainant and one Syed Bismillah are partners in the business of tiles and have given an amount of Rs.33,150,000/- to the petitioner pursuant to four agreements; that out of the said amount, Rs.22,000,000/- were paid by the petitioner, Rs.11,550,000/- by his partner Syed Bismillah while Rs.4,450,000/- were paid in the shape of tiles; that the petitioner in compliance of the said agreements neither transferred the land in their favour nor returned the amount and that on their demand issued cheque bearing No.08255461 of worth Rs.33,150,000/- dated 25.08.2019 of UBL, which, on presentation stood dishonoured by the concerned bank.

3 Learned counsel for the petitioner contends that involvement of the petitioner is tainted with *malafide* on the part of complainant;

that a civil dispute has been converted into criminal as property is already in possession of the complainant party; that it was not the complainant alone with whom the stated agreements were made while the complainant asserted claim of entire amount; that a suit under Order XXXVII CPC is also pending; that petitioner is behind the bars since last ten months; that offence entails punishment up to three years which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, petitioner is entitled to the concession of post-arrest bail.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant repelled the above submissions. It is contended that petitioner is specifically nominated in the F.I.R; that the amount involved is huge; that possession of the property is with third party and not of the complainant and that petitioner is involved in two other cases of like nature, therefore, in case of release, there are chances of his escape, therefore, petition is liable to be dismissed.

5. Arguments heard, record perused.

6. The punishment provided for the offence is up to three years which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C and in such like case grant of bail is a rule and refusal is an exception. Reliance is placed upon case law reported as 2011 SCMR 1708, whereby the Hon'ble Apex Court allowed bail in a case where the allegation against the accused was that he issued cheque of Rs.20 Million which on

presentation was dishonoured. The Hon'ble Apex Court observed that the case does not fall within the prohibitory clause of Section 497 Cr.P.C and the concession of grant of bail must be favourably considered and should only be denied in exceptional cases.

7. Likewise, in case laws reported as 2020 P.Cr.LJ Islamabad 268 and 2020 P Cr.LJ Islamabad 392 it is held that maximum punishment for the offence under section 489-F PPC is three years which does not fall within the prohibitory limb of Section 497 Cr.P.C; person of the petitioner was not required for further investigation; in such like cases grant of bail is a rule and refusal is an exception and that the bail could not be withheld as a measure of punishment.

8. In the present case, challan has been submitted in the Court on 23.01.2020 while charge has already been framed on 28.09.2020. The petitioner was arrested in this case on 19.01.2020 and is behind the bars approximately for the last ten months. The circumstances of the present case warrant exercise of discretion as the bail cannot be withheld as of punishment. Reliance is placed upon Manzoor and 4 others V. The State (PLD 1972 Supreme Court 81) wherein the Hon'ble Apex Court held that:-

"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reason able grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a

guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.”

9. As far as involvement of the petitioner in two other cases of like nature is concerned, suffice it to say that mere involvement without conviction in other cases cannot be considered a bar to extend the concession of bail if the case is made out. Reliance is placed upon case laws reported as **Aftab Hussain V. The State** (2004 SCMR 1467), **Sher alias Shera and another V. The State** (1999 MLD 1643) and **Karim Bux V. The State** (2001 PCr.LJ 1802).

10. In view of above, instant bail petition is allowed, petitioner (Zubair Elahi) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- (Rupees Two Lakh) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran