

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

Criminal Misc. No.765-B/ 2020
Usman Habib Khan
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.
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08.07.2020	Syed Khawar Ameer Bukhari, Advocate for the petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Syed Riaz Hussain Shah, Advocate for respondent No.2. Ghulam Abbas ASI with record.
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This is post-arrest bail petition by accused/petitioner (Usman Habib Khan) in case FIR No.278, dated 27.08.2019, under Section 489-F PPC, Police Station Shalimar, Islamabad.

2. According to the contents of FIR, on 27.06.2019, complainant paid Rs.346,000/- to the petitioner for booking of two return tickets of Islamabad-London and when on 02.08.2019 went to Airport, it transpired that the petitioner got refunded the said amount; that when the complainant asked the petitioner for the return of said amount, the latter issued cheque worth Rs.346,000/- which, on presentation stood dishonoured by the concerned bank.

3. Learned counsel contends that involvement of the petitioner is tainted with malafide on the part of complainant as initially FIR was registered under Section 406 PPC but was subsequently converted in offence under Section 489-F PPC vide Zimni No.8, dated 20.01.2020; that cheque was issued as a guarantee; petitioner is behind the bars for

more than seven months and that he had made substitute arrangements of the tickets for the complainant which makes the case one of further inquiry. Learned counsel placed reliance upon case laws reported as 2017 SCMR 279, 2009 SCMR 1488, 2017 MLD 859 and Order dated 30.04.2020 passed by this Court in Criminal Misc.638-B/2020.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant repelled the above submissions. It is contended that no substitute arrangement of the tickets had been made by the petitioner. When confronted, learned counsel for the petitioner after seeking instructions, opted not to press this ground.

5. Learned State Counsel added that petitioner is habitual offender; involved in several other FIRs of like nature; issuance of cheque and signatures thereupon is admitted; challan has been submitted in the court on 30.01.2020 but the charge could not be framed due to pandemic of Covid-19, therefore, petitioner is not entitled to the concession of bail.

6. Arguments heard, record perused.

7. Record reveals that initially petitioner moved bail application (Criminal Misc.706-B/2020) which was dismissed as withdrawn vide order dated 19.05.2020 as offence under Section 406 of the PPC was substituted with offence under Section 489-F of the PPC vide Zimni No.8, dated 20.01.2020 and the petitioner decided to move

the learned Court of first instance. Now, the instant bail application.

8. 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.PC 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.PC and the concession of grant of bail must be favourably considered and should only be denied in exceptional cases.

9. 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 was three years which does not fall within the prohibitory limb of Section 497 Cr.PC; 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.

10. In the present case, challan has been submitted in the Court on 30.01.2020 but the charge could not be framed due to pandemic of Covid-19 which is not the fault of the petitioner. The petitioner is behind the bars for more than seven months. The circumstances of the

present case warrant exercise of discretion as the bail cannot be withheld as of punishment.

11. As far as involvement of the petitioner in 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 Vs The State (2004 SCMR 1467)**, **Sher alias Shera and another Vs The State (1999 MLD 1643)** and **Karim Bux Vs The State (2001 PCr.LJ 1802)**.

12. In view of above, instant bail petition is allowed. The petitioner (Usman Habib Khan) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

13. 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