

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

Crl. Misc. No. 176 of 2022

HAFIZ MUHAMMAD TALHA.
Versus
THE STATE AND OTHERS.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.03.2022.	Mr. M. Saeed Khan Sudozai, Advocate for Petitioner. Malik Karim Bakhsh Awan and Faiz Muhammad Mahr, Advocates for Complainant. Hazrat Younas, State Counsel. Mr. Zafar Iqbal, A.S.I.

Through the instant petition, the Petitioner (Hafiz Muhammad Talha) is seeking pre-arrest bail in FIR No. 479/2021 dated 13.09.2021 registered for the offence under Section 489-F, PPC with Police Station Lohi Bher, Islamabad. The Petitioner's similar request has already been declined by the learned Additional Sessions Judge-III, Islamabad (East) vide order dated 04.01.2022.

2. The facts as per the contents of the FIR are that the Complainant who is serving in the Pakistan Army as Lieutenant Colonel made a deal with the Accused/Petitioner [Hafiz Muhammad Talha] for purchase of one kanal plot in DHA Quetta for total sale consideration of Rs. 2,925,000/- and paid an amount of Rs. 2,500,000/- as advance in the presence of Imtiaz Mehmood s/o Mian Mehmood Khokhar and Muhammad Javed s/o Muhammad Tufail. Petitioner promised to hand over file of the said plot to the Complainant within three days and when, as per commitment,

Complainant along with remaining sale consideration went to the Petitioner he started using delaying tactics. When the Complainant asked for return of his amount in case Petitioner fails to handover file of the plot to him, the Petitioner handed over a cheque to the Complainant, which was to be encashed on 1st July, 2021. However, when the said cheque was presented for encashment on 8th July, 2021 same was dishonored due to insufficient funds. Another cheque was given to the Complainant as fine by the Petitioner, which was also dishonored. Petitioner on several occasions made breach of promise, handed over bogus cheques and also extended threats to the Complainant's life.

3. Learned counsel for the Petitioner submitted that there is a delay of two months and five days in registration of FIR, which makes the prosecution story doubtful; that the case against the Petitioner is false and frivolous which has been registered with malafide and dishonest intentions; that the Complainant firstly presented the disputed cheque in Bhawalpur and tried to lodge the FIR there but on refusal of the police authorities got registered the FIR in Islamabad; that the Complainant purchased two files of plots against total consideration of Rs. 5,850,000/- and paid an amount of Rs. 2,500,000/- and promised to pay the remaining amount later; that the disputed cheques are cash cheques and not in the name of the Complainant; that the disputed cheques were not given to the Complainant rather were obtained forcefully by one named Ahsan at the behest of the

Complainant as guarantee cheques which was clearly written on the back of the said cheques as such they were to be encashed only in case of failure of Petitioner to hand over the file of the plot after receiving total sale consideration which was never paid; that the Complainant tampered with the cheques and attempted to erase the words “guarantee cheque” written on the back of the same; that dispute between the parties is of civil nature and Petitioner has also filed a case for committing forgery against the Complainant as well as a separate suit for cancellation, declaration and permanent injunction of the cheques; that statements of the witnesses under section 161 Cr.P.C. have not been recorded; that to the extent of commission of offence as alleged in the FIR case against the Petitioner is of further inquiry; that the cheques were not presented at Islamabad and Complainant by using his influence obtained the memo slips from Islamabad; that basic ingredients to establish commission of offence u/s 489-F i.e. dishonestly issuance of cheque and fulfillment of future obligations are missing; and that the Petitioner is innocent and has been falsely implicated in this case. Learned counsel prayed for confirmation of pre-arrest bail already granted to the Petitioner vide order dated 21.02.2022 and in support of his contentions placed reliance on *Major Anwar-ul-Haq versus The State*, PLD 2005 Lahore 607, *Ghulam Kadir versus The State*, 2007 YLR 1495, *Talib Hussain versus The State*, 2007 P.Cr.L.J. 1064, *Mian Allah Ditta versus The State and others*, 2013 SCMR 51, *Naseeb Gul versus Amir Jan and another*, 2013 P.Cr.L.J. 175,

Muhammad Ashraf versus The State and others, 2015 P.Cr.L.J. 1050, Muhammad Iqbal versus The State and another, 2018 YLR Note 157 and Tariq Shafi versus The State, 2921 MLD 589.

4. Learned counsel for the Respondent No.3/Complainant stated that the liability and the issuance of the cheques has not been denied by the Petitioner thus commission of offence u/s 489-F is established against the Petitioner. He further submitted that the allegation that one named Ahsan obtained the disputed cheques from the Petitioner has not been mentioned by the Petitioner in the civil suit filed by him and as such it is clear that such statement before this Court is false and concocted. The Complainant prayed for dismissal of present petition.

5. Learned State Counsel submitted that the words "Guarantee Cheque" are clearly written on the back of the cheques which have been tried to be erased by the Complainant, whereas, delay in payment of remaining sale consideration has also been caused by the Complainant and that the Petitioner has joined investigation. Learned State Counsel did not oppose the grant of bail to the Petitioner.

6. Arguments heard. Record perused.

7. From the contents of the FIR as well as the arguments presented by the counsel, it becomes clear that existence of commercial transaction between the parties is not denied. The Petitioner claims that the said cheques were guarantee cheques and that he had mentioned the same on the

backside of each cheque. Zimni No. 5 dated 14.12.2021 states that perusal of the backside of the disputed cheques shows that white has been applied on it. According to the State Counsel the words "Guarantee Cheque" can be made out despite the use of white on top of it. The original cheques in dispute are available on record and examination thereof confirms the aforementioned statement. No plausible reason for the delay in lodging the FIR was submitted. It is also noted that Petitioner has instituted suit for cancellation of the disputed cheques which is pending. For all the foregoing reasons, *prima-facie*, it does not appear that disputed cheques were issued with dishonest intent which is the key ingredient for the offence under Section 489-F, PPC. Therefore, the matter appears to be of further inquiry in respect of the guilt of the Petitioner.

8. Even otherwise the offence does not carry punishment which would fall within the prohibitory clause of Section 497 Cr.P.C. The Petitioner is previously non-convict, he is not involved in any other criminal case, investigation has been completed and no recovery is to be made from him.

9. For the foregoing reasons, this bail petition is **accepted** and the earlier ad-interim pre-arrest bail granted to the Petitioner, vide order dated 21.02.2022, is hereby confirmed, against the surety bond already furnished, however, the Petitioner shall join the investigation as and when required and appear before the Trial Court on every date of hearing without fail.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(SAMAN RAFAT IMTIAZ)
JUDGE

Juraud