

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.57-B/2020

NOMAN ALI.
Versus
THE STATE AND ANOTHER.

Petitioner by: Mian Asad Hayat, Advocate.
Complainant by: Mr. Rizwan Shabbir Kiani, Advocate.
State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Ali, A.S.I.
Date of Hearing: 10.02.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Noman Ali s/o Muhammad Bashir, seeks post arrest bail in case FIR No.332, dated 08.10.2019, offence under section 489-F PPC, registered at Police Station, Shalimar, Islamabad.

2. The case of the prosecution against the Petitioner, as per FIR, is that the Petitioner, a real estate agent, met with Complainant/Respondent No.2 who introduced himself as agent of Capital Smart City for purchasing the plot and Complainant, through the Petitioner, booked certain plots. The Complainant paid Rs.39,00,000/- on different dates in 2018 for the purposes of purchasing said plot files to the Petitioner. The Respondent No.2/Complainant alleged that after receiving payment, neither the plots files were handed over nor the Petitioner returned the amount received. However, on Complainant's repeated requests Petitioner issued four cheques in lieu of return of amount which were dishonoured. Then Complainant filed written complaint in concerned police Station for registration of FIR against Petitioner. Petitioner filed a fake suit before the Civil Court, Rawalpindi. However, as per settlement between the Petitioner and Respondent No.2/complainant, Petitioner agreed to return Rs.24,00,000/- vide agreement dated 25.06.2019, in terms of which the Complainant returned the earlier four cheques and the Petitioner issued three new cheques of Rs.24,00,000/- which were again dishonoured due to insufficient funds thus the FIR under Section 489-F PPC was registered.

Consequently, the Petitioner was arrested and is behind the bars since, 16.10.2019.

3. The Petitioner applied for bail after arrest before Judicial Magistrate (West), Islamabad which was dismissed vide order dated 09.11.2019, whereas, his similar request was also declined by the Hon'ble Sessions Judge (West), Islamabad vide order dated 21.12.2019.

4. Learned counsel for the petitioner, *inter alia*, contended that the facts narrated in the FIR are not correct and that FIR was registered after delay of two months. Learned Counsel, though, did not accept the allegation mentioned in the FIR, however, submitted that offence in question does not fall within the prohibitory clause of section 497 Cr.P.C, moreover, investigation stands concluded and the Petitioner is not required for further investigation. Learned counsel for the Petitioner further submitted that at the time of settlement between the parties on 25.06.2019, the Petitioner also handed over original documents of his car Toyota Corolla GLI, bearing registration No.LZT-3466, Model 2006, as collateral to the Complainant. Learned Counsel in support of his contentions relied on the case law reported as **PLD 1995 SC 34, 2009 SCMR 1488, 2011 SCMR 1708, 2019 PCr.LJ Note 20 Islamabad High Court and 2019 YLR 2891.**

5. Learned counsel for complainant/Respondent No.2 along with learned State counsel, *inter alia*, contended that during the course of investigation, the Petitioner has been found guilty of the offence and that the trial has commenced and case is fixed for evidence of the prosecution. Learned State Counsel also contended that there are three other FIRs/cases pending against the Petitioner for the same offence. Learned Counsel for Respondent No.2/complainant in order to strengthen his arguments relied on cases reported as **(2018 YLR 338), (2017 PCr.LJ 1189), (2017 MLD 1383), (2017 YLR 694) and (2016 MLD 1450).**

6. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the record with their able assistance.

7. The petitioner has been imputed with offence under section 489-F PPC which does not fall within the prohibitory clause of section 497 Cr.P.C and the

Honorable Supreme Court of Pakistan through different authoritative pronouncements, time and again held, that when an offence does not fall within the prohibitory clause of Section 497 Cr.P.C, bail is a rule and refusal an exception. In this regard, I sought guidance from the case titled as **Tariq Bashir and 05 others Vs. The State** reported as **(PLD 1995 SC 34)**. The exceptions enumerated in the above judgment are not attracted in the facts and circumstances of the case. Investigation against the Petitioner stands concluded and he is not required for further investigation. Moreover, the initiation of trial is not a bar for grant of bail.

9. Apart from above, it is also evident that the FIR was not promptly lodged and an unexplained delay in lodging the F.I.R. also effects the entire prosecution case negatively as perception of consultation and deliberation could not be ruled out and benefit of such doubt also goes in favour of accused.

10. For what has been discussed above, this petition is accepted and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

11. 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.

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan/**