

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.709-B/2020

MUHAMMAD TARIQ FAROOQ.
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Zeeshan Gohar, Advocate.

Complainant by: Raja Muhammad Zubair, Advocate.

State by: Mr. Zohaib Gondal, State Counsel.
Mr. M. Ashiq, Inspector/I.O.

Date of Hearing: 21.05.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Muhammad Tariq Farooq s/o Abdullah Farooq, seeks post arrest bail in case FIR No.45/2018, dated 08.02.2018, registered for offence under section 489-F PPC, at Police Station Sabzi Mandi, Islamabad.

2. As per FIR, the case of the prosecution against the Petitioner is that he issued cheque bearing No. 30142451 dated 07.10.2015, of Standar Chartered Bank for Rs.51,50,000/- to the complainant in lieu of return of loan which, when presented in the concerned bank, was dishonored due to insufficient funds. The complainant reported in the FIR that the petitioner is not only avoiding the payment but also threatening the complainant with dire consequences.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed vide order dated 08.04.2020 and thereafter, his similar request was also declined by the learned Additional Sessions Judge (West)/GBV Court, Islamabad vide order dated 13.04.2020. Hence, this petition for bail after arrest.

4. Learned counsel for the petitioner/accused denied the allegations leveled in the FIR and, submitted that petitioner has been involved in fake and fabricated case. Learned counsel referred the dates of registration of FIR and commission of alleged offence as being 08.02.2018 & 02.11.2015, respectively, and submitted that the delay in registering the FIR is unexplained. Learned counsel further contended that provisions of section 489-F PPC are not

attracted as there is no valid contract either written or oral available on record. Learned counsel argued that the offence, however, does not fall within the prohibitory clause of section 497 Cr.PC; investigation has been completed and no useful purpose would be served by keeping the petitioner behind the bars. Learned counsel lastly contended that the petitioner is previously non-convict, and the other FIR against him is also fake and; that in that case the petitioner has already been granted bail. Regarding petitioner's abscondence from the process of law learned counsel submitted that same was unintentional as petitioner was unaware of the registration of criminal case against him, whereas, the learned trial court while passing order u/s 87 Cr.PC did not fulfill the requirements of said section. Learned Counsel lastly contended that the case of Petitioner is one of further inquiry and he is ready to furnish adequate surety to the satisfaction of the court; therefore, may be released on bail.

5. Conversely, learned counsel for the complainant as well as learned State Counsel, opposed the grant of bail and, *inter-alia*, contended that the petitioner/accused is a habitual offender as such another FIR regarding similar offence has been registered against him and if he is released on bail he may repeat the same offence. Learned Counsel further argued that there is sufficient material available on record to connect the petitioner with the commission of offence. Moreover, he has remained absconder for about two years and was declared proclaimed offender by the trial Court; therefore, not entitled to the concession of bail.

6. I have heard the learned counsel for the parties as well as learned State Counsel and also perused the police record.

7. From the divergent pleadings of the parties and facts of the case, it *prima-facie* transpires that the dispute between the parties is of civil nature, however, the complainant has not filed any civil suit in this regard. An Hon'ble Single Bench of this Court, vide judgment reported as **Muhammad Irfan Vs. The State (2015 PCr.LJ 129)**, has held that "section 489-F of PPC is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine guilt of criminal act and award a sentence, fine or both". Even otherwise, deeper appreciation of facts and evidence through proper trial is required to prove the dishonest intention of the petitioner while issuing the subject cheque. Moreover, there is a delay of more than two years in registration of case against the petitioner which makes the

petitioner's case one of further inquiry falling within the ambit of Section 497(2) Cr.P.C. In this regard reliance is placed on the case law reported as ***Khiyal Saba and another Vs. The State and another (2020 SCMR 340) and Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310).***

8. It has further been apprised that another FIR of similar nature has been registered against the petitioner for the same offence u/s 489-F PPC, but perusal of the record reveals that in that case he has already been granted bail by the Hon'ble Single Bench of this Court, vide order dated 13.05.2020, passed Crl. Misc. No. 683-B/2020. However, it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as ***Muhammad Roshan Vs. The State (2016 MLD 392) and Muhammad Sarwar Vs. The State and others (2016 YLR Note 110).***

9. So far as abscondence of Petitioner is concerned, it is well-settled principle of law that bail can be granted if an accused, even otherwise, has good case for bail on merit and mere absconsion would not come in way while granting the bail. Mere abscondence of an accused may not be deemed sufficient to refuse bail to him, if his case calls for further probe into his guilt within the scope of section 497(2), Cr.P.C. In this respect reliance is placed on the case titled, **"Mitho Pitafi v. The State" reported in (2009 SCMR 299), Ehsan Ullah v. The State" (2012 SCMR 1137), Muhammad Sadiq v. Sadiq and others (PLD 1985 SC 182), and Qamar alias Mitho v. The State and others (PLD 2012 SC 222).**

10. The petitioner is incarcerated since, 25.02.2020, and as per police record challan has already been completed and submitted in the trial Court thus, the petitioner is no more required for further investigation and his further detention would not serve any useful purpose. Even otherwise, the petitioner/accused in the present case has been imputed with offence under section 489-F PPC which does not fall within the prohibitory clause of section 497 Cr.P.C. The Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard has 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, guidance has

been sought from the case law reported as ***Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR, Page 1708), Sikandar Zaman Vs. The State etc. (2011 SCMR, page 870) and Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR, page 1488).***

11. For the foregoing reasons and by following the principles laid down by the above referred judgments of the superior courts of the country, I am inclined to allow this bail petition. Hence, 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.

12. 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/**