ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.303-B/2019
Sultanuddin
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.
	03.06.2019	**Hafiz Farman Ullah Advocate for the petitioner Malik Awais Haider, learned State Counsel with Javaid Akhtar A.S.I.**

Through the instant criminal miscellaneous application, the petitioner, Sultanuddin, seeks bail after arrest in case F.I.R. No.44, dated 11.02.2019, under Section 489-F of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Ramna, Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 13.04.2019 and 23.04.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case; that the allegations levelled in the FIR are absolutely false and frivolous; that bail cannot be withheld merely on the basis of registration of another FIR of similar nature against the petitioner; that the offence alleged to have been committed by the petitioner does not fall within the ambit of the prohibitory clause of Section 497 of the Criminal Procedure Code, 1898 ("Cr.P.C."); and that the petitioner is in judicial custody since his arrest and not required for any further investigation. Learned counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned counsel learned State Counsel opposed the petition by stating that the petitioner is nominated in the FIR with specific role of issuing the cheque in question; that the issuance of the cheque in question has not been denied by the petitioner; that the issuance of the cheque in question together with its dishonouring *prima-facie* connects the petitioner with the commission of alleged crime; and that the petitioner is a habitual offender and is also involved in cases of similar nature. Learned State counsel prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

6. The allegations against the petitioner as contained in the F.I.R. are that he had issued cheque No.00020369 drawn on Summit Bank G-11 Markaz Branch Islamabad for an amount of Rs.24,00,000/- in the complainant's favour as repayment of a loan and that the said cheque was dishonoured on presentation.

7. Although the petitioner is nominated in the FIR with the allegation that he had issued the cheque in question on account of repayment of loan, but in the FIR, there is no mention of details of loan which the complainant claimed to have given to the petitioner, who in turn issued the cheque in question so as to fulfill his liability of repayment of loan. The question as to why the petitioner had given the cheque in question and on what terms the same was given could only be determined at the trial stage as there is no agreement available on the record showing loan

for an amount of Rs.24,00,000/- to be given by the complainant to the petitioner was executed between the parties, therefore, dishonest intention for issuing the cheque in question is yet to be proved after the recording of evidence. Even otherwise, there is a substantial delay of more than one year in lodging the FIR as the alleged occurrence had taken place on 17.01.2018, whereas the FIR in question was lodged 11.02.2019. In the FIR, it is categorically mentioned that the cheque in question was dishonoured on 17.08.2018, however, the FIR in question was registered on 11.02.2019. Such an unexplained delay in lodging the FIR *prima-facie* shows that the FIR in question had been lodged after due deliberation and consultation. The petitioner has remained incarcerated since 12.02.2019 and the investigation is said to have been completed.

8. Perusal of the order through which the bail was declined by the learned Trial Court shows that the petitioner's post arrest bail petition was dismissed mainly on the ground that he was involved in cases of similar nature. There is nothing on the record to show that the petitioner has been involved in other cases of similar nature nor any copy of order showing his conviction has been produced in any other case. In case the petitioner has been involved in cases of similar nature, even then it is settled law that the effect/impact of the criminal record against the accused in other cases is not relevant for disposing of the bail petition. In holding so, I derive guidance from the following case law:-

(i) **In the case of Qurban Ali Vs. The State (2017 SCMR 279), the Hon'ble Supreme Court held as follows:-**

> ***"So far as the list of different criminal cases placed on record by the learned counsel for the complainant through C.M.A. No.486-L of 2016 registered against the accused side in general and petitioner Qurban Ali in particular is concerned, suffice it to observe, at this stage, this Court is only seized of the instant bail application and the effect/impact of the aforesaid criminal record against petitioner and his co-accused is not relevant for disposing of the instant petition."***

(ii) **In the case of Muhammad Irfan Vs. The State (2015 PCr.LJ 129), this Court has held as follows:-**

> ***"9. ... There is nothing on record to show that the accused has ever been convicted. The petitioner was arrested on 22-3-2014 and admittedly, the report under section 173 Cr.P.C. has been submitted and trial shall proceed in accordance with law. The investigations qua the petitioner have already been finalized, therefore, his continued custody is not likely to serve any beneficial purpose at this stage. The amount involved in a case registered under section 489-F, P.P.C. cannot be treated as an exception of the general rule that in such cases bail shall be considered favourably. Even otherwise, section 489-F of P.P.C. is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act, and award a sentence, fine or both as provided under section 489-F, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. It is also important to note that the offence does not fall within the prohibitory clause of subsection (1) of section 497, Cr.P.C. In the light of principles and law laid down by the honourable Supreme Court in cases where offences fall within the non-prohibitory clause of section 497,***

Cr.P.C., this Court is of the view that the petitioner is entitled to bail."

(iii) In the unreported order dated 14.12.2017 passed by the Hon'ble Supreme Court in Criminal Petitions No.1142 of 2017, titled "Jibran Mahmood Vs. The State etc.", it was held as follows:-

"4. The record reveals that petitioner has been in jail for almost four months yet commencement of his trial lest alone its conclusion is not in sight. The offence he is charged with is punishable with three years imprisonment or fine or both, therefore, grant of bail in such like cases is a rule and refusal is an exception. Yet another reason for not declining the bail is that if tomorrow the trial Court comes to the conclusion that the sentence of fine in its discretion would be sufficient to meet the ends of justice, the incarceration undergone by the petitioner would be over and above the sentence provided by the law. Given, the petitioner is involved in a number of similar cases but that would not change the nature of the offence or punishment provided therefor. Ultimate conviction if any, would repair the wrong if the relief of bail turns out to be mistaken by any attribute."

9. In the case of Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR 1488), the Hon'ble Supreme Court has explained the principles for considering the grant of bail, where offences fall within non-prohibitory clause and it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. It is important to note that in the case at hand, the alleged offence under section 489-F PPC, does not fall within the prohibitory clause of subsection (1) of section 497 Cr.P.C. The offence with which the petitioner has been charged is punishable with three years

imprisonment or fine or both. Therefore, grant of bail in such cases is a rule and refusal is an exception. Reference in this regard may be made to the law laid down in the case of Tariq Bashir Vs. The State (PLD 1995 S.C. 34). The exceptions laid down in the said case are not even attracted given the facts and circumstances of the instant case. In the light of law laid down by the Hon'ble Supreme Court regarding cases where offences fall within the non-prohibitory clause of section 497 Cr.P.C., this Court is of the view that the petitioner is entitled to the concession of post-arrest bail.

10. In this view of the matter, the instant petition is allowed and the petitioner is admitted to bail subject to furnishing of bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned Trial Court unless exempted by the learned Trial Court. In case, the petitioner fails to appear before the learned Trial Court on any date of hearing, the bail shall stand cancelled.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan