ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.163-B of 2020
Ch. Muhammad Najeeb
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.
	19.03.2020	**Ms. Unzila Anees Abbasi, Advocate for the petitioner** **Mr. Zohaib Hassan Gondal, learned State Counsel with Sultan Mehmood S.I.** **Raja Fakhar Ajaz, Advocate for the complainant/respondent No.2.**

Through the instant petition, the accused/petitioner, Ch. Muhammad Najeeb S/o Muhammad Sharif, seeks post-arrest bail in case F.I.R.No.223, dated 25.05.2019, registered under Section 489-F P.P.C. at Police Station *Koral*, Islamabad. Earlier the petitioner's post arrest bail petitions were dismissed by the Courts of learned Judicial Magistrate and Additional Sessions Judge, Islamabad, vide orders dated 27.01.2020 and 11.02.2020, respectively.

2. Learned counsel for the petitioner submits that the petitioner has falsely been involved in this case with *malafide* intention and ulterior motives; that the petitioner has no nexus with the complainant; that an agreement dated 12.01.2015 was executed between the petitioner and Chaudhry Muhammad Taj in lieu of which the petitioner had issued eleven guarantee cheques; that a jirga was conducted in which four cheques were returned to the petitioner by Chaudhry Muhammad Taj and Ch. Muhammad Imran, and that they with a *malafide* intent and without having any authority gave the rest of the cheques to other persons including the present complainant as a result of which a dispute between the parties has

arisen; that the dispute between the parties is of a civil nature; that the complainant was not supposed to encash the said cheques; that the alleged offence is not made out against the petitioner as the cheuqes in question had not been issued with a dishonest intention; 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.

3. On the other hand, learned counsel for the complainant/respondent No.2, assisted by learned State Counsel, opposed the petition by stating that the petitioner is nominated in the F.I.R. with specific role of issuing the cheques in question; that the issuance of the cheques in question and signatures thereon has not been denied by the petitioner; that the issuance of the cheques 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.

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

5. The allegations against the petitioner as contained in the F.I.R. are that he had issued four cheques for an amount of Rs.50,00,000/- in the complainant's favour as repayment of a loan which the former obtained on the pretext of purchasing the land. According to the contents of the F.I.R., the petitioner had to return the

said amount within a period of four / five months to the complainant, and that the petitioner failed to return the said amount and issued the cheques in question which on their presentation were dishonoured.

6. The petitioner is alleged to have issued the cheques in question on account of repayment of loan which he received from the complainant on the pretext that he had to purchase the land. A copy of agreement dated 12.01.2015 appended with the record shows that the said agreement was executed between the petitioner and Ch. Muhammad Taj. Under the said agreement, an amount of Rs.1,00,00,000/- had been taken by the petitioner from the said Ch. Muhammad Taj for the investment purposes in the business of money exchange. The rate of profit was also agreed between the parties. Admittedly, there is no agreement was ever executed between the petitioner and the present complainant as regards the amount in question alleged to have been taken by the accused/petitioner as loan. The record further shows that after the execution of agreement dated 12.01.2015, the petitioner issued eleven cheques against the payment of Rs.10,000,000/- to said Ch. Muhammad Taj in lieu of amount given by him or profit as agreed between the parties under the said agreement. According to the petitioner, Ch. Muhammad Taj had received an amount of Rs.71,50,000/- and when he asked him to return the eleven cheques, the said Ch. Muhammad Taj informed him that the invested money was pertaining to different people and he gave the said cheques to them including the present complainant. From the record, it is not clear that was there any agreement executed between the petitioner and the present complainant. The record shows that as regards the recovery of amount in question from the accused/petitioner, a *jirga* was

conducted in which the former had shown his willingness to pay the amount which he borrowed, but it is also not clear as to how the petitioner was under an obligation to pay the amount in question to the present complainant when there is no agreement between the parties. Undoubtedly, an agreement dated 12.01.2015 was executed between the petitioner and Ch. Muhammad Taj. Perusal of the said agreement shows that the petitioner had taken the money from said Ch. Muhammad Taj for investment purposes in the business of money exchange and under the said agreement, the petitioner was liable to pay the profits etc as agreed between them. As regards the petitioner's contention that he had not given the cheques in question to the present complainant or why the petitioner had given the cheques in question and on what terms the same were given could only be determined at the trial stage after recording the evidence as deeper appreciation at bail stage is not warranted. Therefore, apparently dishonest intention, if any for issuing the cheques in question is yet to be proved after the recording of evidence. Even otherwise, there is a substantial delay of more than two months in lodging the F.I.R. in question as the alleged occurrence had taken place on 19.03.2019 while the F.I.R. in question was lodged on 25.05.2019. Such an unexplained delay in lodging the F.I.R. *prima-facie* shows that same had been lodged after due deliberation and consultation. The petitioner has remained incarcerated since 23.09.2019 and the investigation is said to have been completed.

7. 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 *inter alia* 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 convicted 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."*

8. 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 P.P.C. 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.

9. 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.5,00,000/- 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 the case of 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