

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.705-B/2019

Burhan Bin Saeed

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.
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11.12.2019

**Petitioner in person along with his counsel Syed Khawar Ameer Bukhari, Advocate
Mr. Sadaqat Ali Jahangir, learned State Counsel with Jafar Janjua S.I.
Mr. Nasir Azeem Khan Advocate for the complainant
Complainant in person**

Through the instant petition, the accused/petitioner, Burhan Bin Saeed S/o Saeed Anwar, seeks pre-arrest bail in case F.I.R.No.364, dated 19.07.2019, registered under Section 489-F P.P.C. at Police Station I-9 Industrial Area, Islamabad. Earlier *ad interim* pre-arrest bail granted to the petitioner was re-called by the learned Additional Sessions Judge, Islamabad vide order dated 08.10.2019.

2. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case just to harass and humiliate him; that the alleged offence is not made out against the petitioner as the cheque in question has not been issued with a dishonest intention; that the petitioner had issued the cheque in question only as a security/guarantee; that the complainant was not supposed to encash the said cheque; that *malafide* and ulterior motive on the part of the complainant was apparent in the case from the bare reading of the F.I.R.; that the petitioner has an apprehension to be arrested by the local police on the basis of baseless allegations levelled against him by the

complainant through the F.I.R. in question; 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; that the punishment for an offence under section 489-F, P.P.C. is imprisonment for a term which may extend to three years or fine or both. Learned counsel for the petitioner prayed for the petition to be allowed and for the *ad interim* pre-arrest bail already granted to the petitioner vide order dated 05.11.2019 to be confirmed.

3. On the other hand, learned counsel for the complainant, 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 cheque in question on account of payment of profit on the actual sum of Rs.22,58,000/- which was invested by the complainant in the petitioner's company/business of Messrs H.M. Traders Blue Area; and that the issuance of the cheque in question together with its dishonouring *prima facie* connects the petitioner with the commission of alleged crime. Learned 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. Brief facts as stated in the F.I.R. are that the accused/petitioner was the owner of the company (i.e. Messrs H.M. Traders Blue Area, Islamabad), and the complainant is said to have invested an amount of Rs.22,58,000/- in the said company as a partner. Pursuant to the said partnership, the accused/petitioner had to pay profit on the actual sum allegedly invested by the complainant. According to the F.I.R., on account of payment of

profit, the petitioner had issued cheque bearing No.11795085 for an amount of Rs.4,50,000/- drawn at Bank Islami Pakistan Limited Islamabad Branch. The said cheque was dishonoured on presentation before the bank concerned.

6. The petitioner is nominated in the FIR with the allegation that he had issued the cheque for Rs.4,50,000/- on account of payment of profit on the actual sum i.e. Rs.22,58000/- which was invested by the complainant in the petitioner's company. However, in the FIR, there is no mention of details of business which the complainant claimed to have been run with the petitioner, who in turn issued the cheque in question so as to fulfill his liability of payment of profit. Furthermore, as regards the business alleged to have run by the petitioner and the complainant, there is no agreement available on the record showing any business had been jointly run by them. The question as to why and on what terms the petitioner had given the cheque in question to the complainant could only be determined at the trial stage as there is no agreement available on the record showing an amount of Rs.22,58,000/- had been given by the complainant to the petitioner. Therefore, dishonest intention in issuing the cheque in question is yet to be proved after the recording of evidence. Furthermore, the petitioner does not have any previous criminal record.

7. 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 pre-arrest bail.

8. For what has been discussed above, the instant petition is accepted and as a result the *ad interim* pre-arrest bail already granted to the petitioner, vide this Court's order dated 05.11.2019, is hereby confirmed on the basis of bail bonds already tendered by him. The petitioner is directed to join the investigation and appear before the learned trial Court as and when required. The observations made herein above are tentative in nature and are strictly confined to the decision of this bail petition only.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*