

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 279-B of 2019.

Muhammad Mazher Naseem.

VERSUS

The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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14.05.2018. Ch. Abdul Rahman Hur Bajwa, Advocate alongwith the petitioner.
Malik Atif Raza Kalwar, Advocate for the complainant.
Mr Rabi bin Tariq, State Counsel.
Mr Asim, ASI with record.

The petitioner Muhammad Mazher Naseem son of Asgher Ali has sought ad-interim pre-arrest bail in case, F.I.R. No.47, dated 02.02.2019, registered under *section 489-F of Pakistan Penal Code, 1860* (*hereinafter referred to as "PPC"*) at Police Station Kohsar, Islamabad.

2. Brief facts as narrated in the FIR are that the complainant had purchased a plot through the petitioner. The latter was responsible for making payments to the co-owners. The petitioner gave a cheque amounting to Rs.2 million to the complainant for performance of his obligations. On presentation of the said cheque to the concerned Bank, the latter refused encashment due to insufficient funds. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case due to malafide intention and ulterior motives of the complainant; there is delay in

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registration of the instant case; ingredients of section 489-F of PPC are not fulfilled; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner is previously non-convict and non-record holder; the petitioner is innocent and has been falsely involved in the instant case merely to harass and humiliate him; the petitioner was not the owner of the alleged plot nor he had transferred it in favour of the complainant; the petitioner has joined the investigations; the cheque was not issued as an obligation. The learned counsel has, therefore, urged confirmation of the ad-interim pre-arrest bail already granted to the petitioner.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Asim A.S.I. They have opposed the grant of bail. It has been contended that; it is evident from the record that the complainant is a property dealer and he had purchased a plot from the petitioner after making a substantial amount; the parties were known to each other; therefore, a cheque was accordingly given to the complainant; the conduct of the accused brings his case within the exception to the general rule relating to offences falling within the non-prohibitory clause of section 497 Cr.P.C; the cheque has been issued by the petitioner; the petitioner is nominated with specific role in the FIR, hence they have prayed for dismissal of the ad-interim pre-arrest bail already granted to the petitioner.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The offence included in the FIR i.e. section 489-F, PPC is, admittedly of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. By now the law and principles for granting bail in such

cases are well settled. It is important to note that in the case of '*Zafar Iqbal Versus Muhammad Anwar and others*' (2009 SCMR 1488), a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles 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. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

- i) Where there is likelihood of abscondance of the accused;
- ii) Where there is apprehension of the accused tampering with the prosecution evidence;
- iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- iv) Where the accused is a previous convict.

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of "*Subhan Khan Versus The State*", reported as [2002 SCMR 1797] and "*Tariq Bashir and five others Versus The State*", reported as [PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of "*Riaz Jafar Natiq Versus Muhammad Nadeem Dar and others*", reported as [2011 SCMR 1708].

8. Admittedly, the plot purchased by the complainant has been transferred and possession has also been handed over by its owners. It is also not denied that the petitioner was not the owner of the plot purchased by the complainant. There is nothing on record to indicate the obligation which had led to giving of the cheque. Whether or not

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ingredients of section 489-F of PPC are fulfilled needs further probe. The offence falls within the ambit of the non prohibitory clause. The petitioner admittedly does not have any criminal record. There is nothing on record to indicate that there is an apprehension that the petitioner may abscond. The dispute between the parties, prima facie, appears to be of a civil nature. It cannot be ruled out that the criminal case has been registered to harass and humiliate the petitioner so as to settle the dispute. Needless to mention that the arrest of the petitioner is not required for affecting recovery. The arrest of the petitioner in the instant case will be a mere formality. It has been held by the august Supreme Court vide order, dated 15.11.2016, passed in Civil Petition No. 371 of 2016 titled "Muhammad Idrees versus Chairman NAB, Islamabad", as follows;-

"Yes, pre-arrest bail could be confirmed on account of malafides but in the case of "Meeran Bux vs. State" [PLD 1989 S.C. 347], the scope of pre-arrest bail has been enlarged. In appropriate cases it would be confirmed if arrest of the accused, as in this case, appears to be a mere formality."

9. It has been aptly observed by the august Supreme Court in the case of "Manzoor and 04 others versus The State" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

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In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

10. In the circumstances, as mentioned above, this petition is allowed and the ad-interim bail already granted to the petitioner is confirmed, subject to furnishing fresh bail bonds in the sum of Rs.20,000/- (Rupee twenty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**