

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.1044-B/2020

SHAKEEL AHMED
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Javed Iqbal Ramday, Advocate.

Complainant by: Malik M. Zulfiqar, Advocate.

State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Shahid Khan, A.S.I.

Date of Hearing: 12.10.2020.

LUBNA SALEEM PERVEZ; J: Through instant petition, Petitioner Shakel Ahmed, seeks post arrest bail in case FIR No.160/2020, dated 15.08.2020, for offence under section 489-F PPC, registered at Police Station, Margalla, Islamabad.

2. Brief facts of the case are that the accused received a huge amount for investment from the complainant, who after getting knowledge of accused's bad reputation, approached him for return of his amount and it was settled through an agreement that the amount shall be returned in installments. But, accused failed to return the complainant's amount of Rs. 27,20,000/- as per agreement and on intervention of Jirga, issued cheque No. 00000098 drawn at Habib Bank Limited, Bahria Enclave Branch, Islamabad which was dishonored on 24.06.2020. Hence, a criminal case u/s 489-F was got registered against the petitioner.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed vide order dated 18.09.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge-IX (West), Islamabad, vide order dated 25.09.2020, hence, this petition for bail after arrest.

4. Learned counsel for the petitioner, *inter alia*, contended that the facts narrated in the FIR are not correct and that FIR was registered after delay of one month and twenty days. Learned counsel further submitted that complainant and the petitioner are business partners which fact is evident from different agreements executed between the parties and the subject cheque was actually issued as a guarantee to the complainant; that matter is purely of

civil nature which has been converted into criminal proceedings by the complainant; that the offence under Section 489-F has not been made out against the petitioner as the cheque was never issued against any repayment of loan or for fulfillment of obligation; that case of the petitioner falls within the ambit of Section 497(2) Cr.P.C requiring further inquiry; that the alleged offence also does not fall within the prohibitory clause of Section 497 Cr.P.C; Learned counsel lastly contended that the investigation has been completed and the petitioner is no more required by the police, therefore, no useful purpose would be served if he remains in custody; that the petitioner is not previously convicted and there is no apprehension of his abscondance who is ready to furnish solvent surety to the satisfaction of the Court for the purposes of bail. Learned counsel in support of his contentions placed reliance on the case law reported as *Jehanzeb Khan versus The State* (2020 SCMR 1268), *Muhammad Shabbir versus The State and others* (2020 YLR Note22), *Abu Bakar versus The State and others* (2019 PCrLJ Note 20), *Haji Sardar Ali versus Yar Muhammad and others* (PLJ 2016 Cr.C. (Peshawar) 617), *Naseer Ahmad versus The State and others* (2018 MLD 1238) and *Riaz Jafar Natiq versus Muhammad Nadeem Dar and others* (2011 SCMR 1708).

5. Learned counsel for complainant/Respondent No.2 along with learned State counsel, *inter alia*, contended that specific role has been attributed to the petitioner in the FIR; that the accused is a habitual offender having previous history of offences of similar nature, in this regard furnished copy of FIR No. 282/20, dated 14.09.2020, therefore, he is not entitled for bail. Reliance was placed on the judgments re: *Sher Ali vs. The State* (1998 SCMR 190), *Waqas Sajid vs. The State* (2010 MLD 760), *Shameel Ahmed vs. The State* (2009 SCMR 174) and *Makhdoomzada Abdul Karim vs. The State* (2012 PCr.LJ 1956) .

6. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the police record produced at the time of hearing.

7. Record reveals that the accused is behind bars since, his arrest on 03.09.2020, and the Challan has stated to be submitted. It is the contention of the complainant that he had given the money to the petitioner for investment in some business regarding which an agreement between the parties was also executed thus the business relationship between the parties is established and the dispute appears to be of civil nature. Whereas, the Petitioner is constantly denying the issuance of subject cheque as repayment of loan or fulfillment of any obligation and stated that the same was issued as guarantee to the complainant which facts can be considered by the learned Trial Court during the trial, however, the disputed factual issues make the case one of further

inquiry. As regards the other FIR against the petitioner/accused, the record shows that he has not been convicted in the said case. 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)**. 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 and the Honorable Supreme Court of Pakistan through different authoritative pronouncements, 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 is 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)**. In the light of the above judgments of the Hon'ble superior courts, I am inclined to allow this bail petition in view of the fact that the offence does not fall under the prohibitory clause of section 497 Cr.PC; investigation against the Petitioner/accused stands concluded and he is not required for further investigation; no useful purpose would be served from his incarceration.

8. For what has been discussed above, this petition is accepted and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees Two Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

9. 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/*