

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.998-B/2020

MRS. RUKHSANA BIBI.
Versus
THE STATE AND ANOTHER.

Petitioner by: Raja Mazhar Ali, Advocate.
Complainant by: Syed Tanvir Sahil Shah, Advocate.
State by: Mr. Sadaqat Ali Jehangir, State Counsel.
Mr. Mazhar Sial, S.I.
Date of Hearing: 28.09.2020.

LUBNA SALEEM PERVEZ; J: Through instant petition, petitioner seeks pre arrest bail in case FIR No.268/2020, dated 04.06.2020, for offence under section 489-F PPC, registered at Police Station Industrial Area, Islamabad.

2. Record reveals that the petitioner applied for pre-arrest bail before Additional Sessions Judge (West), Islamabad, which was declined vide order dated 14.09.2020. Hence, present petition for bail before arrest.

3. Facts as per FIR are that petitioner purchased furniture from the shop of the complainant situated at Mohallah Awan Colony, Dhok Kala Khan, Shamsabad, Rawalpindi, for an amount of Rs. 28,00,000/-, out of which an amount of Rs. 3,00,000/- was paid by the petitioner as an advance and for the remaining sale consideration of Rs. 25,00,000/- a cheque bearing No. 1607739138 dated 23.10.2019, drawn at MCB Banki Ltd., Pirwadhui, Rawalpindi Branch was issued. Said cheque when deposited by the complainant in his account in Dubai Islamic Bank, I-8 Markaz, Islamabad, for encashment, the same was dishonored due to stop payment. Hence, present case u/s 489-F PPC has been registered against present petitioner.

4. Learned counsel for the petitioner submitted that petitioner is innocent and no offence as alleged in the FIR has been made out against the petitioner; that complainant has got registered criminal case against the petitioner with malafide intentions just to harass and humiliate the petitioner in the society so

as to extort money from her; that no transaction took place between the petitioner and the complainant and alleged cheque was not issued by the petitioner to the complainant rather the unsigned blank cheque was lost by the petitioner regarding which she approached the concerned bank for stop payment and bank also issued letter dated 25.10.2019 in this respect; that an application regarding misplacement of cheque was also submitted to the SHO P.S. Sadiqabad; that moreover, a civil suit for declaration, cancellation of said cheque was also filed by the petitioner on 28.01.2020, which is pending before the court of civil judge, however, restraining order regarding the said cheque has been passed; that no details of allegedly purchased furniture has been provided in the FIR; that all the column of the cheque were blank which were filled by the complainant himself and even signature of the petitioner are forged and fabricated regarding which forensic report has not so far been obtained. Learned counsel lastly submitted that the case does not fall within the prohibitory clause of Section 497 Cr.P.C and the case against the petitioner is one of further inquiry which needs recording of evidence, whereas, there is no apprehension of tempering of record by the petitioner who is previously non-convict and there is also no apprehension of her abscondence as she is cooperating with the prosecution and attending the case as and when required. He prayed for confirmation of pre-arrest bail.

5. Conversely, learned counsel for the complainant vehemently opposed the arguments of the petitioner and submitted that there is variance in the stance of the petitioner as at one place she deposed that she lost the subject cheque and on the other place she alleged that she gave the cheque to Zaitoon Bibi who later handed over to the complainant of the case; that statement of Zaitoon bibi, who is not known to complainant; recorded by the police is totally in variance with the stance taken by the petitioner; that petitioner failed to point out any malafide on the part of complainant, Mst. Zaitoon bibi or the police; that case under the offences mentioned in the FIR have been made out against the petitioner as there is sufficient material available on record to connect the petitioner with the commission of alleged offence; that if granted pre-arrest bail, petitioners is likely to misuse the concession of bail, therefore, she is not entitled for extraordinary concession of pre-arrest bail.

6. Heard the learned Counsel for the parties as well as learned State Counsel and have also perused the police record.

7. It is apparent from the record that allegedly furniture of Rs. 28,80,000/- was purchased by the petitioner from complainant's shop on 18.10.2019 with discount of Rs. 80,000/- and regarding the sale consideration complainant received an amount of Rs. 3,00,000/- cash and for remaining amount of Rs. 25,00,000/- he received the subject cheque dated 23.10.2019 which was later dishonored due to stop payment on 02.01.2020, whereas, present FIR has been registered on 04.06.2020 with a considerable delay of about five months and no justification for that is available on record or in the contents of the FIR. Moreover, it is also strange to note that the complainant uptill now did not approach the civil court for redressal of his grievance regarding recovery of amount. As far as expert report of the National Forensic Science Agency regarding contents of the subject cheque is concerned same has been received vide letter dated 23.07.2020 which is also not clear and reads as follows:-

“1. After careful examination of item No.01 using Video Spectral Comparator (VSC-8000, Software Version 7.2), it is concluded that the signature, amount in words i.e. “Twenty-five lac (only)” and the amount in digits i.e. Rs. “25,00,000/=” have been written using ink(s) with similar optical characteristics. Therefore, it cannot be determined whether different writing instruments were used or not.”.

Thus, in the light of above said facts and the forensic report it becomes necessary to record evidence so as to ascertain the real facts and to establish the guilt or otherwise of the petitioner, hence, it becomes a case of further inquiry. Reliance in this regard is placed on the case law reported as ***Khiyal Saba and another Vs. The State and another (2020 SCMR 340)*** and ***Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310)***. Since, there is nothing brought before the Court by the prosecution that the accused petitioner is not cooperating in the investigation, therefore, there remains no ground of her abscondence. Moreover, the petitioner is previously non-convict and the offences do not fall within the prohibitory clause of section 497 Cr.PC and the Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard 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 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). Hence, petitioner becomes entitle for grant of concession of pre-arrest bail.

8. For what has been discussed above, this bail petition is **accepted** and the earlier ad-interim pre-arrest bail granted to the petitioner, vide order dated 18.09.2020, is hereby confirmed, subject to furnishing of fresh bail bonds in the sum of Rs. 3,00,000/- (Rupees Three 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**