

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Crl.Misc.No.605-B/2019  
Raja Sajid  
**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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<b>11.10.2019</b>	<b>Mr. Muhammad Faisal Butt, Advocate for the petitioner</b> <b>Mr. Sadaqat Ali Jahangir, learned State Counsel with Akhtar S.I.</b> <b>Mr. Abdul Haq Khan Wazir, Advocate for the complainant/respondent No.2</b>
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Through the instant criminal miscellaneous application, the petitioner, Raja Sajid S/o Ali Ahmed, seeks bail after arrest in case F.I.R. No.229, dated 16.07.2019, under Section 489-F of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Khanna, Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 27.08.2019 and 06.09.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case; that the allegations levelled in the F.I.R. are absolutely false and frivolous; that there is an unexplained delay of four years in lodging the F.I.R. in question from the date of the alleged sale transaction; that there is no mention of detail of electronic items allegedly taken by the petitioner from the complainant; 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.

4. On the other hand, learned counsel for the complainant, assisted by learned counsel 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 on account of payment of borrowed electronic items; that the issuance of the cheques in question together with their dishonouring *prima facie* connects the petitioner with the commission of alleged crime. Learned counsel prayed for the bail petition to be dismissed.

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

6. The contents of the F.I.R. show that the complainant was running the business of electronics under the name and style of "*Ali Electronics*". The accused/petitioner came to the complainant's shop and took different electronics items valuing Rs.1,00,000/-. Similarly, again on 17.06.2015, 20.09.2015 and 11.11.2015, he took items valuing Rs.17,20,000/-, 45,000/- and 4,95,000/-, respectively from the complainant's shop with a promise to pay the total amount on 20.12.2016. Out of the total amount i.e. Rs.3,44,1100/-, the accused / petitioner paid an amount of Rs.9,35,100/- only and for the remaining amount, he issued three

cheques: (i) cheque No.776514, dated 21.11.2018 drawn at MCB Bank *Khanna Pul* Branch *Lehtrar* Road, Islamabad for an amount of Rs.5,00,000/-; (ii) cheque No.776591, dated 23.11.2018, drawn at MCB Bank *Khanna pul* Branch *Lehtrar* Road, Islamabad for an amount of Rs.5,00,000/-; (iii) cheque No.05414555, dated 27.02.2019, drawn at Allied Bank Limited F-8/2 Branch, Islamabad for an amount of Rs.15,06000/-. All the said three cheques were dishonoured on their presentation before the banks concerned.

7. According to the complainant, all the said three cheques were given to him by the accused/petitioner on 20.12.2016 as payment for electronic items which he took from the complainant. The record shows that out of three cheques, two cheques i.e. (i) cheque No.776514, dated 21.11.2018 drawn at MCB Bank *Khanna Pul* Branch *Lehtrar* Road, Islamabad for an amount of Rs.5,00,000/-; and (ii) cheque No.776591, dated 23.11.2018, drawn at MCB Bank *Khanna pul* Branch *Lehtrar* Road, Islamabad for an amount of Rs.5,00,000/- were presented before the said Bank for encashment on 09.05.2019 whereas the F.I.R. in question was lodged on 16.07.2019, thus it is apparently clear that there is a delay of almost 38 days in lodging the F.I.R. in question.

8. Although the petitioner is nominated in the F.I.R. with the allegation that he had issued the cheques in question on account of payment of electronic items which he took but in the F.I.R., there is no mention of details of items alleged to have been taken by the accused/petitioner, who in turn issued the cheques in question so as to

fulfill his liability towards the electronic items. The question as to 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 as there is no agreement available on the record showing the electronic items allegedly borrowed by the accused/petitioner from the complainant was executed between the parties. Therefore, dishonest intention 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 one month in lodging the F.I.R. as the cash return memos/dishonouring slips were issued on 09.05.2019 and 10.05.2019, respectively and F.I.R. in question with respect to the alleged occurrence was lodged on 16.07.2019. All such factors *prima-facie* make the case of the petitioner as one of further inquiry. The petitioner has remained incarcerated since 10.08.2019 and the investigation is said to have been completed.

9. 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.

10. 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 two sureties 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 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