

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 220-B of 2020.

Muhammad Asif Tahir.

Vs

The State, etc.

S. No. of order/ proceedings	Date of proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.	26.03.2020.	Syed Aziz ud Din Kakakhail, Advocate for the petitioner. Mr. M. Atif Khokhar, State Counsel. Mr Ashiq Shah, Inspector with record.
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The petitioner Muhammad Asif Tahir son of Tahir Shah has sought post-arrest bail in case FIR No. 281, dated 07.10.2009 registered under sections 406/411/34 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**"), at Police Station Sabzimandi, Islamabad.

2. The brief facts, as alleged in the FIR, are that the complainant had handed over possession of his vehicle alongwith registration documents to the petitioner on monthly rent basis and in return he issued two cheques for an amount of Rs.6000/- and Rs.10,000/- which were dishonoured by the concerned bank on their presentation. It is alleged that the petitioner committed the offence of criminal breach of trust. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; the petitioner is innocent and has not committed the alleged offences; the petitioner has no concern whatsoever with the alleged offences; no incriminating material was recovered from the petitioner; there is no direct or indirect evidence against the petitioner; the petitioner has no criminal record; the petitioner was not absconder; the offences do not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner has been incarcerated for almost two months; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the complaint is based on surmises and conjectures; no recovery has been affected from the petitioner; necessary ingredients of the offence under section 406 of PPC have not been fulfilled; according to the contents of the FIR the offence under section 406 of PPC is not attracted; the petitioner was implicated in the instant case due to malafide intention of the complainant with connivance of the local police; story as narrated in the FIR is false, frivolous and concocted; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the case against the petitioner is that of further inquiry and has, therefore, urged for the grant of post arrest bail.

4. The learned State Counsel has appeared alongwith Ashiq Shah, Inspector. They have opposed the grant of bail and have argued that the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; the petitioner had misappropriated the

vehicle; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial of the case is to be commenced shortly; the offence under section 406 of PPC is made out as the petitioner had misappropriated the vehicle; the petitioner is also involved in two other cases except the present case i.e. FIR no.76 of 2008 registered under sections 420/468 of PPC and FIR no.218 of 2008 registered under section sections 420/468 of PPC; the petitioner is a habitual offender and remained fugitive from law; they have prayed for the dismissal of the instant bail petition.

5. The learned counsel for the petitioner and the learned State Counsel has been heard and record perused with their able assistance.

6. The offences included in the FIR i.e. sections 406/411 PPC are, admittedly, of the category which fall 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. Perusal of record reveals that the ownership of the vehicle remains to be in the name of the complainant and, admittedly, its title has not been transferred to someone else name. It is the case of the petitioner that he never absconded himself and remained at his address. However, he has admitted that he was unaware of the instant case. Despite being on physical remand no recovery was affected from the present petitioner. Furthermore, the alleged occurrence had taken place on 02.09.2009, whereas the instant FIR was registered on 07.10.2009 i.e. after a lapse of more than one month. Whether or not the ingredients of section 406 PPC are satisfied in the instant case also needs further probe. The incomplete report under section 173 Cr.P.C. has been submitted before the learned trial Court. Investigation qua the petitioner has been completed. The offence does not fall within the ambit of the prohibitory clause under section 497(1) of Cr.P.C. The petitioner has been

incarcerated for almost two months; therefore, his continued incarceration is not likely to serve any useful purpose at this stage. This Court is, therefore, of the view that the petitioner is entitled to be extended concession of post arrest bail.

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".

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 petitioner is **granted** post arrest bail, subject to furnishing 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/*