

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.173-B/2020

MUHAMMAD ADIL SHEIKH
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. G. Farooq Awan, Advocate.

Complainant by: Mr. Shabbir Ahmad Mirza, Advocate.

State by: Ms. Atif Khokhar, State Counsel.
Mr. Mehr Ullah, A.S.I.

Date of Hearing: 03.04.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Muhammad Adil Sheikh s/o Nazir Hussain Sheikh, seeks post arrest bail in case FIR No.373/2019, dated 19.11.2019, registered for offence under section 489-F PPC, at Police Station Lohi Bher, Islamabad.

2. The case of the prosecution against the Petitioner is that the complainant who is a British national and an overseas Pakistani met the accused/petitioner through his friend Ali Iftikhar resident of Bahira Town, Islamabad, for purchase of immovable property for the purposes of investment. As per complainant version, on the enticement of accused/petitioner, the complainant made investment of Rs. 24,000,000/- (rupees two crores and forty lacs) for purchase of five files of properties in Bahira Heights, Karachi, and two files of properties in Liberty Commercial, Karachi, but after sometime the accused on the pretext of decline in property rates took back all the said seven files of properties mentioned above from the complainant with the promise to return back the invested amount with profit after selling the same. But the accused neither returned the files nor the amount of Rs. 24,000,000/- and started avoiding the complainant, however, after considerable efforts, the accused/petitioner gave him a cheque bearing No.94500395 dated 29.08.2019 for an amount of Rs. 24,000,000/- drawn at Habib Metropolitan Bank, Bahria Town Branch, Islamabad, which when presented in the bank was dishonored due to insufficient fund in the account,

the complainant, therefore, registered the FIR against the accused/petitioner, who was arrested on 24.01.2020.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed vide order dated 12.02.2020 and subsequently, his similar request was also declined by the learned Additional Sessions Judge-V (East), Islamabad vide order dated 19.02.2020; hence, present petition for bail after arrest.

3. Learned counsel for the accused/Petitioner submitted that he is in the business of real estate and advised the complainant for investment in properties in Karachi who has forcibly, fraudulently and deceitfully obtained the cheque on 29.03.2019 which after tempering with the date as 29.08.2019 presented the same in the bank with malafide intentions to involve him in a frivolous case; that the complainant did not give any property file to the petitioner; that the petitioner is previously non-convict; his case is one of further inquiry and falls within the non-prohibitory clause of section 497 of Cr.PC. Learned counsel contended that the FIR has been registered after a delay of about one and a half month, whereas, the complainant has not presented the original cheque during the investigation purposely to avoid its forensic analysis. Learned counsel while referring CM No. 105/2020 through which application filed before the DIG Islamabad, requesting for forensic analysis of the subject cheque has been placed on record contended that the complainant has used the stale cheque by tempering with the date to get it dishonored; that the investigation has been completed and petitioner is no more required for further investigation by the police, therefore, no useful purpose would be served if he remains in custody; that the petitioner is ready to deposit his passport in view of the apprehension of his leaving the country as well as solvent surety to the satisfaction of the Court for the purposes of bail. Learned counsel in support of his contentions relied on judgments reported as *Shafaqat Hussain Hashmi Vs. The State (2012 MLD 1551)*, *Nadeem Ansari Vs. the State (2018 PCr.LJ 883)*, *Ghulam Rabbani Vs. The State (2018 PCr. LJ (N) 190)*, *Muhammad Sarfraz Vs. The State (2014 SCMR 1032)* and *Dr. Muhammad Tariq Vs. The State (2017 SCMR 1944)*.

4. Learned counsel for the complainant submitted that the Petitioner has fraudulently obtained the files of seven properties in Bahria Town Karachi and Liberty Commercial, Karachi, worth Rs. 24,000,000/- with the intention of cheating a person who is a British national; that before registration of FIR, the complainant has contacted the accused/petitioner on various occasions to return the files or the amount with the profit but in vain; that before arresting the petitioner all the mandatory SOPs have also been followed; that petitioner is a habitual offender and FIR No. 272/2018, and FIR No. 360/2019 are also registered against him for the same offence i.e. Section 489-F PPC, moreover, in FIR No. 360/2019, he was granted conditional bail on 26.08.2019 which order was recalled due to his abscondence which shows his conduct; that petitioner is not entitled to bail as during investigation he has not denied the allegation of fraudulently issuing a cheque or recovery of amount against him. Learned counsel to strengthen his arguments relied on the case law reported as *Shameel Ahmed Vs. The State* (2009 SCMR 174), *Abdul Sattar Vs. The State* (2011 YLR 863 LHR), *Jehand Khan Vs. The State* (PLD 2006 302 LHR), *Asad Ali Vs. The State* (2011 PCr.LJ 752 LHR), *Muhammad Naseem Vs. The State* (2012 PCr.LJ 918 Sindh) and *Sardar Bahadar Mughal Vs. The State* (2013 PCr.LJ 1022 LHR).

6. I have heard the arguments of learned Counsel for the parties as well as learned State Counsel and have also perused the police record.

7. Record reveals that the petitioner/accused has been arrested on 24.01.2020, and challan has already been submitted on 06.02.2020, however, trial of the case is yet to be started. As regards other FIRs against the petitioner/accused are concerned, the record shows that he has not been convicted in the said cases and 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. 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)**. The judgment reported as **Muhammad Irfan Vs. The State (2015 PCr.LJ 129)**, relied upon by the learned counsel for the Petitioner supports his contentions as it has been held therein that “*section 489-F of PPC is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine guilt of criminal act and award a sentence, fine or both*”.

8. From the arguments of the learned counsel for the parties, it transpires that the issue requires thorough probe with regard to the fate of the cheque through its forensic analysis as the petitioner has alleged the tempering with the date of the stale cheque for using it against the petitioner/accused, hence, to ascertain this fact, further inquiry and probe is required which makes the petitioner's case one falling within the ambit of Section 497(2) Cr.P.C. In this regard reliance 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)**. Moreover, the initiation of trial is not a bar for grant of bail.

9. For the foregoing reasons and by following the principles laid down by the above referred judgments of the superior courts of the country as well as view taken by the Hon'ble Supreme Court of Pakistan in the case of **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)**, I am inclined to allow this bail petition. Moreover, Investigation against the Petitioner stands concluded and he is not required for further investigation, whereas, commencement of trial is no ground to refuse bail if even otherwise the accused becomes entitled to the concession of bail.

10. In view of above, this petition is allowed and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court. Petitioner is also directed to surrender his passport before the learned Trial Court.

11. 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/**