

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Criminal Misc. No.199-B of 2022

Amir Ali
Versus
The State and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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18.03.2022	M/s Sardar Aleem Arshad Abbasi and Raja Usman Zakir, Advocates for the petitioner/accused. Qazi Rehan Shabbir, Advocate for respondent No. 2 / Complainant Mr. Shahbaz Shah, learned State Counsel Muhammad Ramzan, A.S.I.
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Through the instant petition, the petitioner seeks bail after arrest in case F.I.R. No. 176/16, dated 27.05.2016, offence under Section 489-F, P.P.C., registered at Police Station Aabpara, Islamabad.

02. It is alleged that the petitioner received an amount of Rs. 16,00,000/- as loan from the complainant and in order to return the same, issued the cheque which was dishonoured upon presentation in the bank, hence the instant FIR.

03. Learned counsel for the petitioner / accused, *inter alia*, contends that petitioner /

accused has falsely been implicated in this case; allegation leveled against him is baseless; he has no link or connection whatsoever with the commission of offence; there is no apprehension of his abscondence or tampering with the prosecution evidence if he is released on bail; offence does not fall within the prohibitory clause of Section 497 Cr.P.C as maximum punishment for the offence is three years; FIR has been registered with an unexplained delay of more than one month; he is previously non-convict and that he is ready to furnish bail bonds, therefore, the petitioner / accused is entitled for grant of post arrest bail.

04. On the other hand, learned State Counsel assisted by learned counsel for complainant has vehemently opposed the bail application on the ground that petitioner / accused is involved in other case of similar nature; he remained fugitive from law, hence he is not entitled for grant of bail after arrest.

05. Arguments advanced by learned Counsel for the petitioner/accused, learned State Counsel assisted by learned counsel for the complainant have been heard and record has

been perused with their able assistance.

06. As per prosecution story, the petitioner / accused received an amount of Rs. 16,00,000/- as loan from complainant and issued a cheque against said amount drawn on Bank Al-Habib, Aabpara on 07.04.2016, which was dishonoured upon presentation in the bank.

07. I.O has stated that there is no evidence or witness produced by the complainant regarding payment of huge amount of Rs.16,00,000/- as loan to the petitioner / accused.

08. As far as registration of other case is concerned, it has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Babar Hussain Vs. The State and another" (2020 SCMR 871)**, that:

"Mere involvement of an accused in other criminal cases (without any conviction in any of them) could not be a ground to withhold the concession of bail".

09. It would suffice that mere involvement in other case would not disentitle the petitioner/accused from the relief of bail if he otherwise succeeds in bringing his case within

the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in the name of trial when conclusion thereof can competently impose due punishment for such released person. Mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the cases titled as **"Moundar and others V. The State" (PLD 1990 SC 934), "Babar Hussain V. State" (2020 SCMR 871), "Muhammad Rafique V. State" (1997 SCMR 412) and "Muhammad Abid Farooq V. The State and another" (2015 P Cr. LJ 224).**

10. As far as argument of learned State Counsel that the accused remained fugitive from law is concerned, in this regard law is very much clear. It is held by the Hon'ble

Supreme Court of Pakistan in a case titled as **"Mitho Pitafi V. The State" (2009 SCMR 299)**, that:

"Bail could be granted, if accused had good case for bail on merits and mere his absconsion would not come in the way while granting him bail".

The same principle has been laid down in cases titled as **"The State V. Malik Mukhtar Ahmad Awan" (1991 SCMR 322)**, **"Attaullah V. The State through AG Khyber Pakhtunkhwa and another" (2020 SCMR 451)** and **"Khalid Umar V. Syed Athar Iqbal, Chairman Pakistan Overseas Employment Promoters and another" (2011 SCMR 1555)**.

11. The offence does not fall under the prohibitory clause of section 497 Cr.P.C. Reliance is placed upon cases reported as **"2020 SCMR 1258, 2020 SCMR 717, 2017 PLD 733, 2016 SCMR 1439 and 2011 SCMR 1708"**; wherein it is held that:

"Where a case fell within non prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably

considered and should only be denied in the exceptional circumstances.

12. Reliance is also placed on a case titled as **"Riaz Jafar Natiq Vs. Muhammad Nadeem Dar" (2011 SCMR 1708)**, where bail after arrest was granted to the accused, who issued the cheque for a sum of Rs. 20 Million, which was dishonored on presenting in the bank.

13. Investigation in the case has been completed; no recovery has been effected from the petitioner / accused; FIR has been registered with an unexplained delay of more than one month; he is previously non-convict, no more required by the police for further investigation; he is behind the bars for the last more than two months without any progress in the trial. Fair and speedy trial is one of the fundamental rights of the petitioner; no moral and legal compulsion exists to keep him behind the bars for an indefinite period which amounts to punishment without trial.

14. I do not find this to be a case where bail should be refused as an exception. Ultimate conviction and incarceration of guilty accused

can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the accused for his unjustified incarceration if he is acquitted ultimately.

15. A tentative assessment of record shows that the petitioner has made out a case of further inquiry as envisaged under Section 497(2) Cr.P.C.

16. In view of above, instant petition is **accepted** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 100,000/- (Rupees One Hundred Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

17. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.


(TARIQ MEHMOOD JAHANGIRI)
JUDGE