

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.102-B/2020

Ahsan Siddique

Versus

THE STATE AND ANOTHER.

Petitioner by: Mr. Rizwan Ijaz, Advocate.
Complainant by: Ch. Naeem Ali Gujjar, Advocate.
State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Murtaza, S.I.
Date of Hearing: 21.02.2020.

LUBNA SALEEM PERVEZ, J. Through instant petition, Petitioner Ahsan Siddique s/o Muhammad Siddique, seeks post arrest bail in case FIR No.581/2019, dated 16.10.2019, for offence under section 489-F PPC, registered at Police Station, Golra Sharif, Islamabad.

2. Prosecution's case against the Petitioner is that FIR, was lodged by the Complainant against one Sajjad Ahmed Khan on 16.10.2019, whereby he reported that he is an Engineer by profession and entered into a written agreement with one Malik Naseer Awan regarding construction of a plaza with the understanding that the payment shall be made to him in installments during the construction work. But later on Malik Naseer Awan showed his inability to pay the full amount and issued a cheque of Rs. 87,00,000/- drawn at the Bank Account of his son namely Faisal, which was dishonored by the concerned Bank, on its presentation and he lodged an FIR against Faisal who was later on arrested. In the meantime a person named Afzal Mughal came in the picture and stated that he intend to purchase the plaza and he will pay the remaining amount so they arrived at a compromise and, therefore, he withdrew the FIR. Later he came to know that the accused Petitioner (Ahsan Siddique) is purchasing the said plaza who as per FIR

called the Complainant in his office and promised to pay him the amount of Rs.1,43,00,000/- and issued cheque No. 121936305 dated 30.09.2019, of Rs. 87,00,000/- drawn at Habib Metro Bank, PWD commercial Area, Rawalpindi Branch, which was dishonored when presented to the Bank, therefore, Complainant lodged FIR against the present accused.

3. The accused / Petitioner applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed, vide order dated 20.01.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge-IX (West), Islamabad, vide order dated 30.01.2020, hence, this petition for bail after arrest.

4. Learned counsel for the Petitioner/accused, *inter alia*, contended that he has falsely been nominated in the FIR with malafide intentions and he has no direct nexus with the complainant as there was an agreement between the Complainant and Malik Naseer Awan and there is a civil litigation going on between them in the civil courts, thus, matter is of civil liability which would be ascertained after recording of evidence. Learned Counsel further contended that the Complainant and Malik Naseer Awan in connivance with each other has maliciously involved the accused in the offence. Learned Counsel stated that the date of offence in the FIR is 06.10.2019, however, the FIR has been registered after a month on 07.11.2019, whereas, the accused has been arrested on 08.01.2020, and is incarcerated since then. Learned Counsel requested for bail on the above grounds and in support of his contentions relied on the judgment of this Court reported as **Muhammad Irfan vs. The State (2015 PCr.LJ 129)**.

5. Learned counsel for complainant/Respondent No.2 along with learned State counsel, *inter alia*, contended that the accused is a habitual offender having previous history of involvement in offences of similar nature. It was further contended that the complainant owed a huge amount against Malik Naseer Awan and on accused/Petitioner's assurance he dropped proceedings against Malik Naseer Awan, but till date he is running after the accused for

discharging the liability. It was lastly contended that since, the accused is a habitual offender, therefore, he is not entitled for concession of bail. Reliance was placed on the judgment titled **Muhammad Kamran Bhatti versus The State** reported as **(2018 YLR 1554)**.

6. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the police record with their able assistance.

7. Record reveals that the accused is behind bars since his arrest on 08.01.2020 and the Challan has already been submitted before the Court on 11.01.2020. As regards criminal history as alleged by the learned counsel for the Complainant is concerned he was not able to produce anything in black and white in this regard, however, as far as registration of other cases of similar nature against an accused is concerned, it would not be out of place to observe that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Moreover, maximum punishment provided for offence u/s 489-F is up to 03 years, which obviously does not fall within the prohibitory clause of Section 497 Cr. P.C. The Honorable Supreme Court of Pakistan through different authoritative pronouncements, 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, I sought guidance from **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)**. In the light of the above judgments of the Hon'ble superior courts I am inclined to allow this bail petition in view of the fact that the offence does not fall under the prohibitory clause of section 497 Cr.PC, investigation against the Petitioner/accused stands concluded and he is not required for further investigation and no useful purpose would be served from his incarceration, moreover, the initiation of trial is not a bar for grant of bail.

8. For what has been discussed above, this petition is accepted 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.

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

*Adnan/**