

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

(JUDICIAL DEPARTMENT)

Crl. Misc. No.812-BC of 2020

Muhammad Saleem
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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21.08.2020

Mr. Luqman Zafar Chaudhry, Advocate for the petitioner.
Mr. Ghulam Shabbir Mangat, Advocate for respondent No.1 along with respondent.
Mr. Hammad Saeed Dar, State Counsel along with Zulfiqar Ali, A.S.I.

Ghulam Azam Qambrani, J.:-Through this petition, the petitioner (Muhammad Saleem) seeks cancellation of bail granted to respondent No.1/accused by the learned Additional Sessions Judge-VII, Islamabad-West, in case F.I.R No.65, dated 09.02.2020, offence under Section 489-F PPC, registered at Police Station Aabpara, Islamabad.

2. Briefly stated facts of the case are that the petitioner lodged the instant F.I.R with the allegation that the accused/respondent No.1 (hereinafter be called as “***respondent***”) received an amount of Rs.14,00,000/- from him as “*Qarz-e-Hasna*” and executed an agreement on 19.11.2019; that as per said agreement, the respondent issued four cheques for repayment of the said amount, but the first cheque which was issued for the first installment, on its presentation for encashment before the concerned bank, was dishonored. Hence, the instant F.I.R.

3. Learned counsel for the petitioner, *inter-alia*, contends that there was no malice or malafide on the part of petitioner to falsely involve the respondent in the commission of offence; cheque issued by the respondent was dishonored due to insufficient balance which, *prima facie*, reflects the dishonesty on the part of the respondent; the respondent was granted pre-arrest bail contrary to the principles, hence urged for cancellation of the same.

4. Conversely, learned counsel for the respondent contended that there is no evidence on record that the latter attempted to tamper with the prosecution evidence or misused the concession of bail; the petitioner has miserably failed to point out any ground for cancellation of bail in terms of Section 497 (5) Cr.P.C.; that the story narrated by the petitioner is false, frivolous and baseless and that the F.I.R has been lodged against him with malafide intention. The learned State counsel has supported the impugned order and prayed for dismissal of the instant bail cancellation petition.

5. Arguments heard, record perused.

6. It is settled law that the principles for cancellation of bail are distinct and altogether different from seeking bail. It is also settled law that bail once granted, will be cancelled only if the order granting bail on the face of it is perverse, patently illegal, erroneous, factually incorrect resulting into miscarriage of justice or passed in violation of the principles for grant of bail or the concession of bail has been misused. In the instant case, *prima facie*, the respondent has executed an agreement for repayment of loan on 19.11.2019 in presence of

witnesses, in the shape of four installments and for the said purpose, he issued four cheques, out of which two cheques have been dishonoured, therefore, malafide on the part of the respondent is made out that he want to usurp heavy amount of Rs.14,00,000/- on the pretext that it is Qarz-e-Hasna.

7. Holy Quran is the basic and primary source of law and it is complete code of life. Term Qarz-e-Hasna/ goodly loan is signified whatever is given to another selflessly and absolutely with the belief that he would get the reward in the next world. Stipulation, however, is that the loan should be a goodly one i.e. it should not be tainted with selfish designs and it should be for the sake of Allah, for the purpose of pleasing Allah. The term Qarz-e-Hasna is not available for a loan to be extended by a person in this world to another person. Although the basic transaction has been termed by the respondent as Qarz-e-Hasna, but at the same time, such transaction has been reduced into writing in the shape of an agreement dated 19.11.2019 in the presence of witnesses, which shows that for the purpose of repayment of said loan/ Qarz-e-Hasna, the respondent issued four cheques out of which two have been dishonoured, which shows that the dishonesty and malafide on the part of the respondent that he issued the cheques to the petitioner knowing that there was no sufficient balance in his account.

8. Further, the respondent moved pre-arrest bail before the learned Addl. Sessions Judge-VII, Islamabad-West, which is a protection to innocent but the respondent failed to establish any malafide or ulterior motive on the part of the petitioner to falsely involve him in the instant case. Pre-arrest bail is not

a substitute for post arrest bail in every run of mill. Considerations of malafide, ulterior motive or abuse of process of law are missing in the case in hand. Further, the similar offence has been repeated as the second cheque issued by the respondent has also been dishonoured and F.I.R No.282 dated 06.08.2020 has been registered against the respondent under Section 489-F, P.P.C, at Police Station Aabpara, Islamabad. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in **Rana Abdul Khaliq Vs. The State and others** (2019 SCMR 1129) wherein it has been held as under:-

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”

In another case reported as **Gulshan Ali Solangi and others Vs. The State through P.G. Sindh** (2020 SCMR 249), it has been held as under:-

“Grant of pre-arrest bail is a remedy rooted into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honour. It cannot be granted in every run of the mill criminal case, particularly to the accused confronting prima facie charges structured upon material/ evidence, warranting custody, that too, on the basis of positions/ pleas, verification whereof, is consequent upon recording of evidence.”

9. For what has been discussed above, instant petition is **allowed**. The impugned order dated 04.03.2020, passed by the learned Addl. Sessions Judge-VII, Islamabad-West, is hereby set-aside, being in contravention of the above said principles. The pre-arrest bail confirmed in favour of the respondent, is hereby cancelled.

10. However, the observations made hereinabove are meant for disposal of this application only which shall have no bearing on merits of the case.

(GHULAM AZAM QAMBRANI)
JUDGE'

Announced in open Court on 25th of August, 2020

(GHULAM AZAM QAMBRANI)
JUDGE

Rana .M.Ift.