

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Miscellaneous No.50-B of 2020

Rashid Ali
Vs.
The State and another

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(05)	21.01.2020	Mr.Tariq Mehmood Jahangiri, Advocate alongwith petitioner. Mr. Shafqat Abbas Tarrar, Advocate for the respondent No.2. Mr. Zohaib Hassan Gondal, State counsel along with Zafar Iqbal, Sub-Inspector, Police Station Koral, Islamabad.

The petitioner Rashid Ali son of
Qurban Ali Kausar has sought pre-arrest bail
in case F.I.R No.426, dated 13.09.2019
registered under section 408 of Pakistan
Penal Code, 1860 (hereinafter referred to as
“PPC”) at Police Station Koral, Islamabad.

2. Brief facts as narrated in the FIR are
that the complainant is owner of Zong
Franchise situated at Khanna-pull,
Islamabad and he hired the services of the
petitioner accused, namely Rashid Ali as

Franchise Finance Manager. It is further alleged that during Moharram holidays, the Company issued security of Rs.6.2 million which was loaded on the cell phone of the petitioner. It is also alleged that the petitioner had further issued the load to the retailers. The petitioner malafidly telephonically called the RSO and Card Whole Sellers and received total amount of Rs.6.4 million and therefore, committed an offence of criminal breach of trust, hence the instant case.

3. The learned counsel for the petitioner has *inter-alia*, contended that the latter has been involved in the instant case with malafide intention of the complainant in connivance with the police; there is no evidence against the petitioner to establish that the complainant has employed him as his Manager; offence is not attracted against the petitioner; the petitioner has not committed any criminal breach of trust; the

petitioner is the partner of the complainant; the complainant has made meager amount to the petitioner and did not fulfill his part of obligation; the petitioner is previously non-convict and non-record holder; there is no direct or indirect evidence against the petitioner for the commission of the alleged offence; the petitioner is innocent; the offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner has been involved in the instant case just to humiliate and harass him; the petitioner is ready to join investigation; ingredients of section 408 of PPC are not fulfilled; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the case against the petitioner is that of further probe. The learned counsel has prayed for confirmation of pre-arrest bail already extended to the petitioner vide order, dated 24.01.2020. The learned counsel for the

petitioner has placed reliance on the cases titled "*Zahid Afzal and another vs. The State*" [PLD 1991 S.C. 382], "*Muhammad Jameel and another vs. The State and another*" [2013 P.Cr.L.J. 1369], "*Rana Zulfiqar Ali vs. The State*" [PLD 2003 Lahore 403], "*Samina Ashraf vs. The State and another*" [2013 YLR 1678], "*Ghulam Mustafa and another vs. The State and another*" [2013 YLR 440], "*Muhammad Anwar Javed and another vs. The State and another*" [2012 YLR 2913], "*Muhammad Mehmood vs. The State*" [2003 YLR 1898], "*Abdul Hai Siddiqui and 02 others vs. The State*" [1993 P.Cr.L.J. 446] and "*Muhammad Imran vs. The State and another*" [2019 MLD 346].

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Zafar Iqbal, SI. They have opposed the confirmation of pre-arrest bail. It has been argued that; the petitioner has failed to point out any malafide on the

part of complainant or ulterior motives to falsely involve him in the commission of the offence; the petitioner is nominated in the F.I.R with specific role; no malafide has been pointed out by the petitioner against the complainant or police, so as to make out a case for the grant of pre-arrest bail; sufficient incriminating evidence is available on record to connect him with the commission of the offence; recovery has been affected from the petitioner; hence prayed for dismissal of the pre-arrest bail.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of record reveals that the petitioner is nominated in the F.I.R with a specific role. Malafide on part of police as well as the complainant is pre-requisite for the grant of extra-ordinary concession of pre-arrest bail to the petitioner. The stance

of the petitioner is that the complainant actually borrowed from the former an amount of Rs.6 million and on demand for return of the same, the latter malafidly involved him in a frivolous case with connivance of the local police. However, the petitioner has failed to bring on record any document, which could establish that he has given such a huge amount to the complainant as loan. Deeper appreciation of evidence cannot be undertaken at the stage of pre-arrest bail. There is nothing on record to show that the complainant had registered the case due to malafide or to harass the petitioner. Likewise, no malafide appears on part of the prosecution.

7. It is settled principle of law that 'pre-arrest bail' is different from that of 'post arrest bail'. Deeper appreciation of available record/evidence is not permissible at this stage. The ingredients of pre-arrest bail are distinguishable then those of post arrest

bail. There is nothing on record to show that the case was an outcome of enmity or that the criminal case has been registered to merely humiliate the petitioner. The petitioner has not been able to make out a case in his favour within the parameters laid down for the purposes of granting pre-arrest bail. Furthermore, there is no evidence on record to show that the police or the complainant has registered the case due to malafide or malice. This Court is guided by the law laid down by the Hon'ble Supreme Court in the cases of "*Murad Khan versus Fazal-e-Subhan and another*" [PLD 1983 Supreme Court 82], "*Meeran Bux versus The State and another*" [PLD 1989 Supreme Court 347] and "*Ajmal Khan versus Liaqat Hayat and another*" [PLD 1998 Supreme Court 97].

8. In these circumstances, this Court is of the opinion that the petitioner is not entitled to the grant of anticipatory bail at

this stage and consequently the ad-interim pre-arrest bail granted in favour of the petitioner is ***recalled*** and the petition is accordingly ***dismissed***.

9. 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.


(GHULAM AZAM QAMBRANI)
JUDGE

Rana.M.Ift*