

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.921-B/2020

JAMAL JAN.
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Farhat Ullah Jan, Advocate.

State by: Ms. Talat Rizwan, State Counsel.
Mr. Alamgir, S.I.
Mr. Wajid, A.S.I.

Complainant by: Kareem Ullah Khan, Advocate.

Date of Hearing: 27.08.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Jamal Jan s/o Multan, seeks post arrest bail in case FIR No.341/2019, dated 03.08.2019, for offence under section 489-F PPC, registered at Police Station Tarnol, Islamabad.

2. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed, vide order dated 29.07.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge-IX (West), Islamabad, vide order dated 13.08.2020; hence, this petition for bail after arrest.

3. The case of the prosecution against the Petitioner is that the petitioner entered into a sale agreement with the complainant regarding sale of excavator machine for a sum of Rs. 31,000,00/- (rupees Thirty One Lac) out of which an amount of Rs. 10,00,000/- was paid by the petitioner on the same date, whereas, to the extent of remaining sale consideration he issued a cheque bearing No. 10011725 drawn at Bank Al-Habib, Ltd. Tarnol Branch. Said cheque when presented was dishonoured due to the insufficient funds as well as Dormant Account. The complainant alleged issuance of cheque with dishonest intention by the petitioner and got registered FIR against the petitioner.

4. Learned counsel for the Petitioner submitted that the FIR has been registered on 03.08.2019, for alleged commission of offence on 05.03.2019, with delay of 04 months which delay has remained unexplained; that the petitioner is innocent who has falsely been implicated in the present case; that the allegations leveled against the petitioner are ill founded baseless and concocted one; that the matter between the parties is purely of civil nature and the complainant instead of filing a civil suit got registered a criminal case against the petitioner; that the petitioner has been arrested on 21.07.2020; that the investigation has been completed and, therefore, there is also no possibility of tempering with the record; that there is no previous conviction and there is no question of abscondence of the petitioner; that the case also does not fall within the prohibitory clause of section 497 Cr.PC. Learned counsel prayed for grant of bail to the petitioner by placing reliance on case law reported as titled *Muhammad Shabbir v. The State and another (2020 YLR N 22 HC Lahore)*.

5. On the other hand, learned Counsel for Complainant and learned State Counsel present with the I.O. have vehemently opposed the petition for grant of bail to the petitioner and submitted that petitioner is an Afghan National who possessed fake NIC which has now been blocked by the NADRA; that petitioner provided fake and bogus registration documents of the excavator machine and registration of the said vehicle has already been cancelled by the motor vehicle authorities, Rawalpindi regarding which an FIR has also been registered; that the cheque has been issued against a dormant account which clearly indicates the malafide intentions of the petitioner; that that petitioner remained absconder for almost one year and there is still chances of his abscondance if granted bail, therefore, instant petition is liable to dismissed.

6. Arguments heard. Record perused.

7. From the divergent pleadings of the parties and facts of the case, it *prima-facie* transpires that the dispute between the parties is of civil nature, however, the complainant has not filed any civil suit in this regard. An Hon'ble Single Bench of this Court, vide judgment reported as ***Muhammad Irfan Vs. The State (2015 PCr.LJ 129)***, has held 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". Even otherwise, deeper appreciation of facts and evidence through proper trial is required to prove the dishonest intention of the petitioner while issuing the subject cheque. Moreover, there is a delay of almost four months in registration of case against the petitioner which makes the petitioner's case one of further inquiry 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).***

8. So far as abscondence of Petitioner is concerned, it is well-settled principle of law that bail can be granted if an accused, even otherwise, has good case for bail on merit and mere absconsion would not come in way while granting the bail. Mere abscondence of an accused may not be deemed sufficient to refuse bail to him, if his case calls for further probe into his guilt within the scope of section 497(2), Cr.P.C. In this respect reliance is placed on the case titled, "**Mitho Pitafi v. The State" reported in (2009 SCMR 299), Ehsan Ullah v. The State" (2012 SCMR 1137), Muhammad Sadiq v. Sadiq and others (PLD 1985 SC 182), and Qamar alias Mitho v. The State and others (PLD 2012 SC 222).**

9. The petitioner is incarcerated since, 21.07.2020, and as per police record, challan has already been completed and submitted in the trial Court thus, the petitioner is no more required for further investigation and his further detention would not serve any useful purpose. Even otherwise, 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).***

10. For the foregoing reasons and by following the principles laid down by the above referred judgments of the superior courts of the country, I am inclined to allow this bail petition. Hence, 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.

12. 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

*Junaid/**