

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 150-BC/2020
Awais Rasheed
Vs
Hateef Ijaz, etc

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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16.07.2020	Ch. Abdul Khaliq Thind, Advocate for the petitioner, Mr. Muhammad Bilal Ibrahim, State Counsel, Mr. Mudasir Rizwan and Ms Bushra Raja, Advocates for respondent No.1, Mehdi Khan ASI with record.
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Through the instant petition under Section 497(5) of the Code of Criminal Procedure, 1898 ("Cr.P.C"), petitioner/complainant assails order dated 22.10.2019, passed by the learned Additional Sessions Judge-VII, Islamabad-West whereby respondent No.1/accused (Hateef Ijaz) was allowed pre-arrest bail in case FIR No.310, dated 05.08.2019, under Section 489-F PPC, Police Station Karachi Company, Islamabad.

2. Facts, relevant for the disposal of instant petition are that the petitioner/complainant lodged the subject FIR against the respondent No.1/accused with the allegations that on 15.06.2018, he purchased a vehicle, Honda Civic, Model 2008 from Ahad Khan and Hateef Ijaz (respondent No.1) for consideration of Rs.15,00,000/- and also paid Rs.500,000/- in terms of expenses for documentation and registration of the said vehicle; that subsequently it transpired that the vehicle was non-custom paid and on demand for return of amount, they issued cheque worth

Rs.15,00,000/- but on presentation the same was dishonoured by the concerned bank. After the registration of FIR, respondent No.1 moved an application in terms of Section 498 Cr.PC which was allowed by the learned ASJ-VII, Islamabad-West vide order dated 22.10.2019, being assailed through the instant petition.

3. Learned counsel for the petitioner contends that the case laws referred in the impugned order are not attracted to the facts of present case; that the observations of the learned Court regarding liberty of the petitioner amounts to exaggeration and beyond its jurisdiction as it is the prerogative of the Constitutional Courts and not of the Sessions Courts; that before the registration of FIR, it is not mandatory to issue notice in terms of Section 30 of the Negotiable Instruments Act, 1881, as observed in the impugned order and that no ground was available with the respondent No.1 to make a case of further inquiry, therefore, impugned order being nullity in the eye of law is liable to be set-aside. Learned counsel placed reliance upon case laws reported as PLD 2009 SC 427, 2015 SCMR 1394, 2015 PCr.LJ 1473, 2016 YLR 190.

4. On the other hand, learned counsel for respondent No.1 supported the impugned order. It is argued that the basic ingredient of offence under Section 489-F PPC i.e. dishonest intention for issuance of cheque is not available in the present case; that dishonesty cannot be attributed to the respondent No.1 because he is not liable to pay the cheque amount; that the alleged agreement is between father of the

respondent No.1/accused and the petitioner and only signatures of respondent No.1 are admitted as a witness; that role of respondent No.1 is merely of a corroborator; that the security cheque also shows that respondent No.1/accused is just a guarantor and not the issuer for the payment to the petitioner; that suit under Order XXXVII of the CPC filed by the petitioner is pending adjudication while suit for cancellation of cheque filed by respondent No.1 is also pending before the Court of competent jurisdiction, therefore, petition is liable to be dismissed. Learned counsel refers case law reported as PLD 2017 SC 730, 2004 SCMR 231, 2018 YLR Note 157 and PLD 2020 Lahore 97.

5. Learned State Counsel added that the challan has been submitted in the Court on 29.10.2019 while charge was framed on 11.01.2020 but the trial could not be concluded due to prevalence of Covid-19 pandemic.

6. Heard the learned counsel for the parties and perused the record with their able assistance.

7. The only question before the Court is that for cancellation of bail in terms of Section 497(5) of the Cr.PC, strong and exceptional grounds warranting interference in the bail granting order are required as laid down by the Hon'ble Apex Court in the case of "Muzaffar Iqbal Vs Muhammad Imran Aziz and others (2004 SCMR 231)" wherein it is held that:-

"3. It is well settled by now that "considerations for the cancellation of bail are different from the considerations for the grant of bail. Section 497(1) Cr.PC prohibits the grant of bail for offences punishable with death or

imprisonment of ten years or over. Section 497(5) Cr.PC does not command the Court to cancel the bail even when the offence is punishable with death or imprisonment for life, and even if the grant of bail is prohibited under Section 497(1) Cr.PC the discretion is left in the Court under Section 497 (5) Cr.PC which is *pari meterea* with the principle which apply to the setting aside of the orders of acquittal.” (Miandad V. The State 1992 SCMR). In view of what has been mentioned herein above, it is not a fit case for cancellation of bail **as strong and exceptional grounds are needed to get it cancelled which are not available.**” [emphasis added]

8. Similarly, in the case of **Khalid Ahmad Soomro and others Vs. The State (PLD 2017 SC 730)**, the Hon’ble Apex Court held that:-

“4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497, Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police.

5. Although for grant of pre-arrest bail one of the pre conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years’ imprisonment. All those aspects if are combindly taken, may constitute element of mala fide.”

9. In the light of above, when civil litigation is pending regarding the subject matter i.e.

cheque in issue and the Investigating Officer present in the Court certifies that the cheque bear writing on its back as "for security of Honda Accord" and the fact that the agreement regarding the subject vehicle is between the petitioner and father of respondent No.1/accused, wherein the respondent No.1/accused is just a witness, there exists no exceptional ground to interfere in the impugned order.

10. The principles laid down in PLD 2009 SC 427 & 2015 SCMR 1394 are based on the facts of murder and kidnapping cases while case laws 2015 PCr.LJ 1473 & 2016 YLR Note 190, pertain to decision of pre-arrest bail and not of bail cancellation, therefore, the case laws relied upon by the learned counsel for the petitioner do not extend any help to the petitioner due to having distinct facts and circumstances.

11. Even otherwise, for seeking cancellation of bail, there should be some material to show that the accused has misused the concession of bail, threatened the prosecution witnesses or hampered or attempted to hamper the evidence. No such ground has been even alleged, therefore, in absence of ingredients warranting cancellation of bail, the instant petition cannot succeed. It is thus accordingly dismissed being devoid of merits.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran