

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.683-B of 2020
Mohammad Tariq Farooq
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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13.05.2020

Mr. Zeeshan Gohar, Advocate for the petitioner
Hazrat Younas learned State Counsel with Nasrullah A.S.I.
Ch. Waseem Bahadar, Advocate for the complainant

Through the instant petition, the accused/petitioner, Mohammad Tariq Farooq S/o Abdullah Farooq, seeks post-arrest bail in case F.I.R.No.317, dated 28.10.2017, registered under Section 489-F P.P.C. at Police Station *Aabpara*, Islamabad. Earlier the petitioner's post-arrest bail petitions were dismissed by the Courts of learned Judicial Magistrate and Additional Sessions Judge, Islamabad, vide orders dated 08.04.2020 and 21.04.2020, respectively.

2. Learned counsel for the petitioner submits that the petitioner has falsely been involved in this case with *malafide* intention and ulterior motives; that the alleged offence is not made out against the petitioner as the cheque in question had not been issued with a dishonest intention; that the offence alleged to have been committed by the petitioner does not fall within the ambit of the prohibitory clause of Section 497 of the Criminal Procedure Code, 1898; and that the petitioner is in judicial custody since his arrest and not required for any further investigation. Learned counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

3. On the other hand, learned counsel for the complainant opposed the petition by stating that the petitioner is nominated in the F.I.R. with specific role of issuing the cheque in question; that the issuance of the cheque in question has not been denied by the petitioner; that the issuance of the cheque in question together with its dishonouring *prima-facie* connects the petitioner with the commission of alleged crime; and that the petitioner is a habitual offender and is also involved in cases of similar nature. Learned counsel prayed for the bail petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

5. Brief facts as stated in the F.I.R. are that the complainant Syed Mansoor ul Hassan had paid an amount of Rs.68,00,000/- to the petitioner for the purchase of a house but failed to transfer any house. In order to return the said amount, the petitioner issued a cheque amounting to Rs.35,00,000/- in favour of the complainant and promised to pay the remaining amount in cash. It is further alleged that when the said cheque was presented for encashment in the bank concerned, it was dishonoured due to insufficient balance.

6. The accused/petitioner is alleged to have received an amount of Rs.68,00,000/- from the complainant to purchase a house. However, the petitioner failed to transfer any house in the complainant's favour and issued him a cheque for an amount of Rs.35,00,000/- in his favour which on presentation before the bank concerned was dishonoured.

7. Although the petitioner is nominated in the F.I.R. with the allegation that he had issued the cheque in question on account of repayment of financial

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obligation. However, there is no agreement available on the record to show on what terms an amount of Rs.68,00,000/- had been paid to the petitioner and such question could only be determined at the trial stage after recording the evidence as deeper appreciation at bail stage is not warranted. The question as to why the petitioner had given the cheque in question and on what terms the same was given would also be determined at the trial stage. Even otherwise, there is a substantial delay of more than one year in lodging the F.I.R. in question as the alleged occurrence had taken place on 15.10.2016, while the F.I.R. in question was lodged on 28.10.2017. Such an unexplained delay in lodging the F.I.R. *prima-facie* shows that same had been lodged after due deliberation and consultation. The petitioner has remained incarcerated since 25.02.2020 and the investigation is said to have been completed. The investigating officer apprised the Court that the charge has not been framed as yet and the proceedings before the learned Trial Court have been halted due to the pandemic of Covid-19. Therefore, the petitioner cannot be kept incarcerated indefinitely.

8. Perusal of the order through which the bail was declined by the learned Trial Court shows that the petitioner's post arrest bail petition was dismissed *inter alia* on the ground that he was involved in cases of similar nature. There is nothing on the record to show that the petitioner has been convicted in any other case. In case the petitioner has been involved in cases of similar nature, even then it is settled law that the effect/impact of the criminal record against the accused in other cases is not relevant for disposing of the bail petition. In holding so, I derive guidance from the following case law:-

- (i) In the case of Qurban Ali Vs. The State (2017 SCMR 279), the Hon'ble Supreme Court held as follows:-

"So far as the list of different criminal cases placed on record by the learned counsel for the complainant through C.M.A. No.486-L of 2016 registered against the accused side in general and petitioner Qurban Ali in particular is concerned, suffice it to observe, at this stage, this Court is only seized of the instant bail application and the effect/impact of the aforesaid criminal record against petitioner and his co-accused is not relevant for disposing of the instant petition."

- (ii) In the case of Muhammad Irfan Vs. The State (2015 PCr.LJ 129), this Court has held as follows:-

"9. ... There is nothing on record to show that the accused has ever been convicted. The petitioner was arrested on 22-3-2014 and admittedly, the report under section 173 Cr.P.C. has been submitted and trial shall proceed in accordance with law. The investigations qua the petitioner have already been finalized, therefore, his continued custody is not likely to serve any beneficial purpose at this stage. The amount involved in a case registered under section 489-F, P.P.C. cannot be treated as an exception of the general rule that in such cases bail shall be considered favourably. Even otherwise, section 489-F of P.P.C. is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act, and award a sentence, fine or both as provided under section 489-F, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. It is also important to note that the offence does not fall within the prohibitory clause of subsection (1) of section 497, Cr.P.C. In the light of principles and law laid down by the honourable Supreme Court in cases where offences fall within the non-prohibitory clause of section 497, Cr.P.C., this Court is of the view that the petitioner is entitled to bail."

- (iii) In the unreported order dated 14.12.2017 passed by the Hon'ble Supreme Court in Criminal Petitions No.1142 of 2017, titled "Jibran Mahmood Vs. The State etc.", it was held as follows:-

"4. The record reveals that petitioner has been in jail for almost four months yet

commencement of his trial lest alone its conclusion is not in sight. The offence he is charged with is punishable with three years imprisonment or fine or both, therefore, grant of bail in such like cases is a rule and refusal is an exception. Yet another reason for not declining the bail is that if tomorrow the trial Court comes to the conclusion that the sentence of fine in its discretion would be sufficient to meet the ends of justice, the incarceration undergone by the petitioner would be over and above the sentence provided by the law. Given, the petitioner is involved in a number of similar cases but that would not change the nature of the offence or punishment provided therefor. Ultimate conviction if any, would repair the wrong if the relief of bail turns out to be mistaken by any attribute."

9. In the case of Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR 1488), the Hon'ble Supreme Court has explained the principles for considering the grant of bail, where offences fall within non-prohibitory clause and it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. It is important to note that in the case at hand, the alleged offence under Section 489-F P.P.C. does not fall within the prohibitory clause of subsection (1) of Section 497 Cr.P.C. The offence with which the petitioner has been charged is punishable with three years imprisonment or fine or both. Therefore, grant of bail in such cases is a rule and refusal is an exception. Reference in this regard may be made to the law laid down in the case of Tariq Bashir Vs. The State (PLD 1995 S.C. 34). The exceptions laid down in the said case are not even attracted given the facts and circumstances of the instant case. In the light of law laid down by the Hon'ble Supreme Court regarding cases where offences fall within the non-prohibitory clause of section 497 Cr.P.C., this Court is of the view that the petitioner is entitled to the concession of post-arrest bail.

10. In this view of the matter, the instant petition is allowed and the petitioner is admitted to bail subject to furnishing of bail bonds in the sum of Rs.5,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice the case of either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned Trial Court unless exempted by the learned Trial Court. In case, the petitioner fails to appear before the learned Trial Court on any date of hearing, the bail shall stand cancelled.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan