

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.818-B/2020

NAEEM UR REHMAN
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Danish Ishraq Abbasi, Advocate.
Complainant by: Mr. Muhammad Shakil Abbasi, Advocate.
State by: Ms. Bushra Tariq Raja, State Counsel.
Mr. Muhammad Ameer, A.S.I.
Date of Hearing: 17.07.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Naeem ur Rehman, seeks post arrest bail in case FIR No.221/2018, dated 14.05.2018, for offence under section 489-F PPC, registered at Police Station, Bhara Kahu, Islamabad.

2. Brief facts of the case are that the complainant entered into a written sale agreement with the petitioner regarding a plot, for total sale consideration of Rs. 37,00,000/- out of which Rs. 11,00,000/- was given to the present petitioner as earnest money. Complainant also constructed a boundary wall and fixed main gate around the plot. Later on, it was revealed to the complainant that the ownership of the plot is not in the name of petitioner, who has fraudulently sold it to the complainant, hence, complainant contacted the petitioner and demanded back the earnest money and the expenses incurred on construction of boundary wall and gate. Petitioner initially showed his willingness to return the earnest money and issued a cheque for Rs. 11,00,000/- bearing No. 21362999-CDA dated 28.10.2017, drawn at Soneri Bank Muslim Town, Branch Rawalpindi, which was dishonored on 08.11.2017, on the ground of closure of account. When the complainant again demanded his amount from the petitioner, he along with other persons namely Raja Jehangir and Raja Ayaz, threatened him for dire consequences.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed vide order dated 23.06.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge (East), Islamabad, vide order dated 02.07.2020, hence, this petition for bail after arrest.

4. Learned counsel for the petitioner, *inter alia*, contended that the facts narrated in the FIR are not correct and that FIR was registered after delay of six months. Learned counsel further submitted that neither the petitioner issued the cheque in question nor he signed the same. Learned Counsel, though, did not accept the allegation mentioned in the FIR, however, submitted that offence in question does not fall within the prohibitory clause of section 497 Cr.P.C, moreover, investigation stands concluded and the Petitioner is not required for further investigation. Learned counsel contended that the other accused has not yet been arrested, whereas, the case is one of further inquiry and probe. Learned counsel lastly contended that the investigation has been completed and the petitioner is no more required by the police, therefore, no useful purpose would be served if he remains in custody; that the petitioner is not previously convicted and there is no apprehension of his abscondance who is ready to furnish solvent surety to the satisfaction of the Court for the purposes of bail. Learned counsel in support of his contentions place reliance on the case law reported as *Shahid Aziz vs. The State* (2007 YLR 1810); *Arif Iqbal vs. The State* (2016 PCr.LJ Note 57), *Muhammad Awais Khalid vs. The State* (2009 PCr.LJ 116); *Muhammad Riaz vs. The State* (2010 MLD 1063) and *Riaz Jafar Natiq vs. Muhammad Nadeem Dar* (2011 SCMR 1708 and *Muhammad Tanveer vs. The State* (PLD 2017 SC 733); *Malik Safdar Ali Khan vs. The State* (2012 YLR 930), *Imtiaz Ali vs. The State* (2014 PCr. LJ 424) and *Khurram Shahzad vs. The State* (2020 PCr.LJ 392); He relied on judgments reported as *Tariq Bashir vs. The State* (PLD 1995 SC 34), *Muhammad Irfan Vs. The State* (2015 PCr.LJ 129), *Muhammad Akbar Vs. The State* (2005 PCr.LJ 677), *Muhammad Tanveer vs. The State* (PLD 2017 SC 733) and *Khurram Shahzad vs. The State* (2020 PCr.LJ 392).

5. Learned counsel for complainant/Respondent No.2 along with learned State counsel, *inter alia*, contended that specific role has been attributed to the petitioner in the FIR; that the accused is a habitual offender having previous history of offences of similar nature, in this regard furnished copy of FIR No. 394/2017, dated 10.10.2017; that the petitioner remained absconder for a considerable period and was arrested in consequence of proceedings u/s 87 Cr.PC; that there is an apprehension of misuse of bail by the accused, therefore, he is not entitled for bail. Reliance was placed on the judgments re: *Sher Ali vs. The State* (1998 SCMR 190), *Waqas Sajid vs. The State* (2010 MLD 760), *Shameel Ahmed vs. The State* (2009 SCMR 174) and *Makhdoomzada Abdul Karim vs. The State* (2012 PCr.LJ 1956) .

6. In rebuttal, learned counsel for the accused/petitioner submitted that the petitioner has been granted bail, vide order dated 27.06.2020, in FIR No. 394/2017, dated 10.10.2017, and furnished copy of the same. Learned counsel

further submitted that mere abscondence is no ground for refusing bail and in this regard relied on the case law reported as *Mumtaz Ali vs. The State* (PLD 2007 Karachi 127), *Muhammad Jamil vs. Zahidullah* (2018 MLD 768) and *Mosam Khan vs. The State* (2018 PCr.LJ 284). Hence, prayed for grant of bail.

7. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the police record produced at the time of hearing.

8. Record reveals that the accused is behind bars since, his arrest on 16.06.2020, and the Challan has stated to be submitted. The Petitioner is constantly denying the issuance of subject cheque which being a factual controversy is to be considered by the Trial Court, however, the disputed factual issues make the case one of further inquiry. As regards the other FIR against the petitioner/accused, the record shows that he has not been convicted in the said case and now has been granted bail. However, it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as ***Muhammad Roshan Vs. The State* (2016 MLD 392) and *Muhammad Sarwar Vs. The State and others* (2016 YLR Note 110)**. 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 and the Honorable Supreme Court of Pakistan through different authoritative pronouncements, 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 is 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)**. The judgment reported as ***Muhammad Irfan Vs. The State* (2015 PCr.LJ 129)** relied upon by the learned counsel for the Petitioner supports his contentions as it has been 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”***. In the light of the above judgments of the Hon’ble superior courts, I am inclined to allow this bail petition in view of the fact that the offence does not fall under the prohibitory clause of section 497 Cr.PC; investigation against the Petitioner/accused stands concluded and he is not required for further investigation; no useful purpose would be served from his incarceration.

9. For what has been discussed above, this petition is accepted and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees Two Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. 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

Adnan