

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

Crl. Misc. No.229-B-2017

Raja Sajjad Hussain

V.

The State & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

15.05.2017	Ch. Mansoor Ahmad, Advocate for petitioner. Mr. Yasir Barkat, State Counsel with Ashiq Shah, SI.
------------	---

Through the instant petition, the petitioner seeks bail before arrest in case FIR No.86 dated 18.03.2016 Under Section 489-F PPC registered at P.S. Industrial Area, Islamabad.

2. The case against the petitioner is that, he and Abdul Khaliq s/o Rehmat Din, are the owners of the Company by the name 'TIER4' and the complainant/respondent No.2, invested a sum of Rs.2 million in the same. Under the agreement, a sum of Rs.3.5 million was to be repaid including profit and in this behalf, the accused tendered a cheque drawn on Standard Chartered Bank, I-8

Markaz, Islamabad, which when presented for payment, was dishonoured.

3. The petitioner applied for bail before arrest before the learned Sessions Judge, Islamabad which was allowed vide order dated 05.04.2016 on the basis of compromise between the parties. Subsequently, respondent No.2 filed an application for cancellation of bail on account of breach of terms of agreement by the petitioner and the learned Additional Sessions Judge (West), Islamabad, vide order dated 07.04.2017, recalled the order dated 05.04.2016.

4. During course of proceedings, learned counsel for the petitioner was confronted, whether instant petition is an application under section 498 Cr.P.C. for bail before arrest or is a revision petition under section 439 Cr.P.C. to which, he specifically submitted that the same is a petition for bail before arrest under section 498 Cr.P.C.

5. Learned counsel for the petitioner, *inter alia*, contended that after cancellation of bail by learned Additional

Sessions Judge (West), Islamabad, a subsequent petition for bail before arrest before this Court is maintainable. In this behalf, reliance was placed on cases reported as 'Shahid Imran Vs. The State & Others' (2011 SCMR 1614), 'Abdul Rafique alias Qassu Vs. The State' (1994 P.Cr.LJ 2507), 'Naseer Ahmed and Another Vs. The State' (2009 P. Cr.LJ 1430) & 'Rais Wazir Ahmad Vs. The State' (2004 SCMR 1167). Learned counsel, *inter alia*, contended that admittedly, during the course of proceedings in the bail application filed by the petitioner, a compromise was reached between the petitioner and respondent No.2, however, it is the latter, who violated the terms and conditions of the same and moved an application for cancellation of bail, which was allowed by the learned District Judge (West), Islamabad. It was further contended that the investigation in the matter stands concluded and the challan has been presented in the court and the petitioner is no longer required for the investigation. It was further submitted

that once notice is issued in the proceedings for bail before arrest then the same should not be dismissed on technical grounds, as the High Court has the jurisdiction to grant bail before arrest.

6. Learned State Counsel, *inter alia*, contended that instant petition is not maintainable inasmuch as the petitioner has the remedy of filing criminal revision against cancellation of bail. It was further contended that the cases relied upon by the learned counsel for the petitioner are not relevant in the facts and circumstances of instant case.

7. The petitioner seeks bail before arrest in the above noted FIR under section 489-F PPC. The petitioner earlier was allowed bail before arrest by the learned Additional Sessions Judge (West), Islamabad vide order dated 05.04.2016. The referred bail was granted to the petitioner on the basis of compromise between respondent No.2 and the petitioner. Subsequently, respondent No.2 filed an application for cancellation of bail on the basis that the petitioner has

breached the terms and conditions of compromise and has not made the payment in accordance with the installment schedule agreed between the parties. As mentioned above, vide impugned order dated 07.04.2017, earlier bail granting order was recalled.

8. On the specific query of the Court, learned counsel for the petitioner submitted that the instant application is for bail before arrest and is not a criminal revision and in this behalf, cited various judgments which provide that this Court has the jurisdiction to grant bail before arrest and in case, the petitioner approaches this Court, the matter should not be dismissed on technicalities, where notice has been issued. There is no cavil with the principles laid down in the judgments relied upon by the learned counsel for the petitioner, but the same are not applicable in the facts and circumstances of the case. The Hon'ble Supreme Court of Pakistan, in case reported as 'Muhammad Malik Pervaiz Vs. The State' (1968 P.Cr.LJ 196), held that

where the bail before arrest was cancelled by the Sessions Court, subsequent application for bail before arrest was not maintainable before the High Court and the remedy, if any, is by way of revision from the order of the court concerned, cancelling bail. The referred view was followed by the Hon'ble Lahore High Court, Lahore in a case reported as 'Javed Iqbal Vs. The State [(1998 Law Notes (Lahore) (659))].

9. In view of above judgments, instant petition for bail before arrest is not maintainable. Even-otherwise, no malafide or ulterior motives has been alleged by the petitioner on behalf of prosecution, which is the sole ground for grant of bail before arrest.

10. In view of above, instant petition is not maintainable and is dismissed accordingly.

(AAMER FAROOQ)
JUDGE

Zawar

