## 2012 Y L R 879

[Islamabad]

Before Shaukat Aziz Siddiqui, J

**Syed UMMAR HUSSAIN---Petitioner** 

Versus

**THE STATE and another---Respondents** 

Criminal Miscellaneous No.678-B of 2011, decided on 30th November, 2011.

## Criminal Procedure Code (V of 1898)---

Zafar Iqbal v. Muhammad Anwar and others 2009 SCMR 1488; Shameel v. The State and others 2009 SCMR 174; Riaz Jaffar Natiq v. Muhammad Nadeem Dar and others 2011 SCMR 1708 and Sikandar Zaman v. The State and others 2011 SCMR 870 fol.

Shah Zeb Khan for Petitioner.

Khawaja Javed Iqbal, Standing Counsel and Abdul Sattar, S.I. for the State.

Abdus Salam Qureshi for Respondent No.2.

## **JUDGMENT**

**SHAUKAT AZIZ SIDDIQUI, J.--**-Petitioner Syed Umer Hussain seeks bail in case registered vide F.I.R No.381, dated 2-7-2011, offence under section 489-F, P.P.C. at Police Station Margalla, Islamabad.

- 2. Briefly, the prosecution story as gleans out from the F.I.R. is that complainant of the case namely, Akhtar Seth moved an application to the SSP, Islamabad with the assertion that complainant is residing at Islamabad since long, having friendly relations with Syed Ummar Hussain, (present petitioner) since 1983-84. He further stated that petitioner was in dire need of Rs.8,00,000 and he while deposing trust upon him paid an amount of Rs.8,00,000 in cash, in the month of March, 2010. The petitioner promised him that, he would pay Rs.7,000 per one lac before 15-8-2011. The petitioner gave three cheques amounting to Rs:900,000 which contained some amount of profit and further promised to pay Rs.7,40,000 later on. Description of cheques given in the F.I.R. is as under:--
- (i) Cheque No.9708755, amounting to Rs.50,000, dated 20-9-2010.
- (ii) Cheque No.9708752, amounting to Rs.450,000 dated 15-3-2011.
- (iii) Cheque No.9708759, amounting to Rs.400,000 dated 15-8-2011.

All cheques to be drawn at Standard Chartered Bank, Islamabad.

3. The complainant further narrates that on presentation of two cheques both were dishonoured and on contact, the petitioner refused to make the payment with profit and extended threats of dire consequences.

- 4. The petitioner was arrested on 18-8-2011. He approached the "Allaqa Judicial Magistrate" for grant of bail but his request was declined vide order dated 24-8-2011. Feeling aggrieved, the peti-tioner approached learned Sessions Judge, Islamabad who entrusted the bail petition to learned Additional Sessions Judge, Islamabad but his petition met the same fate. Resultantly, petitioner approached this court for grant of bail after arrest.
- 5. The learned counsel for the petitioner submits that only two cheques amounting to Rs.500,000 were presented to the bank which according to the sayings of the complainant were dishonoured. He further argued that offence under section 489-F, P.P.C., does not fall within the prohibitory clause of section 497, Cr.P.C, therefore, the petitioner is entitled to the concession of bail.
- 6. Conversely, the learned counsel for the complainant assisted by the learned Standing counsel opposed the bail petition, mainly on the ground that number of other cases either against the family members of the petitioner or on their behest are registered. He further submits that issuance of cheques is admitted, therefore, petition, is liable to be dismissed.
- 7. I have heard the learned counsel for the parties and have perused the record. The plain reading of section 489-F, P.P.C. which is being reproduced hereinbelow, makes it abundantly clear that three different punishments are provided which obviously in the facts and circumstances of the case can be inflicted as punishment upon any accused obviously on the strength of evidence and data available on the record.

"Whoever dishonestly issues a cheque towards re-payment of a loan or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years, or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque".

- 8. As is evident from above;
- (i) Imprisonment which may extend to 3 years.

(ii) with fine

OR

(iii) with both.

The provision itself provides a right to an accused to get himself absolved from the charge by adducing evidence, that he made arrangements with his bank to ensure that the cheque was to be honoured and it was the fault of the bank not honouring the cheque. In my estimation, on the conclusion of trial despite finding any accused guilty of the offence, there is every likelihood/probability/possibility that trial court may impose fine of a meagre amount of Rs.50 only, as punishment. When asked from the learned counsel of the complainant that whether above said possibility emerges from this provision itself or not? The learned counsel very frankly gave the answer in affirmative. In such an eventuality, to deprive any person from the concession of bail is simply harsh and unjust.

9. It is well-settled law with the mandate of the dictums of the Superior Courts of the country that law has to be stretched in favour of accused and beneficial interpretation has to be made in his favour. When there is just a remote possibility that an accused may not be awarded imprisonment of even one month then propriety demands that discretion has to be exercised in favour of the accused. Now, coming to the other extreme, that maximum punishment provided is up to 03 years, which does not fall within the prohibitory clause of section 497, Cr.P.C. The honourable Supreme Court of Pakistan through different authoritative pronouncements 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, I seek guidance from 2009 SCMR page 1488, Zafar Iqbal v. Muhammad Anwar and others, 2009 SCMR page 174, Shameel v. The State and others 2011 SCMR page 1708, Riaz Jaffar Natiq v. Muhammad Nadeem Dar and others and 2011 SCMR page 870 Sikandar Zaman v The State and others

10. On enquiry, the I.O. informed the court that present petitioner has no criminal history and till to date even no F.I.R. is registered against him. As such there is no exceptional circumstance on the basis of which petitioners request of bail may be declined. Thus for the foregoing reasons, this petition is allowed. The petitioner is granted bail subject to furnishing of bail bond of Rs.500,000 with one surety of like amount to the satisfaction of the trial court.

M.W.A./24/Isl Bail granted.