

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 810-B of 2019.

Wajid Ali.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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22.01.2020. Mr. M. Arif Khan, Advocate alongwith the petitioner.
Sh. Khizar ur Rashid, Advocate for the complainant.
Mr Sadaqat Ali Jahangir, State Counsel.
Mr Saqib, ASI with record.

The petitioner Wajid Ali son of Ali Haider has sought ad-interim pre-arrest bail in case, F.I.R. No. 320, dated 02.11.2019, registered under *section 489-F of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC")* at Police Station Bani Gala, Islamabad.

2. Brief facts as narrated in the FIR are that the petitioner had received an amount of Rs. 6 million from the complainant as "Qarz-e-Hassna" and pursuant thereto four cheques were issued, which on presentation to the concerned Bank were not encashed. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is innocent and has been falsely involved in the instant case; story as alleged in the FIR is false, frivolous and concocted; the instant case has been registered against the petitioner just to harass and blackmail him; the instant case is based on malafide intention of the

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complainant; there is delay of one and a half month in registration of the instant FIR; the petitioner has not committed any offence; the offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner is previously non-convict and non-record holder; the petitioner has no concern whatsoever with the alleged offence; the petitioner had not issued cheques against any obligation; ingredients of section 489-F PPC are not fulfilled; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence. The learned counsel has, therefore, urged confirmation of the ad-interim pre-arrest bail already granted to the petitioner. The learned counsel has placed reliance on the case titled "*Badshah Jan vs. Allah Ditta Sethi and others*" [PLD 2013 Islamabad 39].

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Saqib, A.S.I. They have opposed the grant of bail. It has been contended that; the petitioner had taken loan of substantial amount from the complainant and pursuant thereto issued four cheques, which were dishonoured; the conduct of the petitioner brings his case within the exception to the general rule relating to offences falling within the non-prohibitory clause of section 497 Cr.P.C; the cheques have been issued by the petitioner; the petitioner is nominated with specific role in the FIR, hence they have prayed for dismissal of the ad-interim pre-arrest bail already granted to the petitioner.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

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6. The offence included in the FIR i.e. section 489-F, PPC is, admittedly of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of "*Zafar Iqbal versus Muhammad Anwar and others*" [2009 SCMR 1488], a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles 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. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

- i) Where there is likelihood of abscondance of the accused;
- ii) Where there is apprehension of the accused tampering with the prosecution evidence;
- iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- iv) Where the accused is a previous convict.

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of "*Subhan Khan versus The State*", reported as [2002 SCMR 1797] and "*Tariq Bashir and five others versus The State*", reported as [PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of "*Riaz Jafar Natiq versus Muhammad Nadeem Dar and others*", reported as [2011 SCMR 1708].

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8. Perusal of the record reveals that the alleged occurrence had taken place on 16.09.2019, whereas the instant FIR was registered on 02.11.2019 i.e. after a lapse of more than one and a half month. The business relationship of petitioner's brother with the complainant has not been denied. The Investigating Officer has confirmed that the petitioner had filed a complaint on 09.07.2017 at the Police Station, Mardan for registration of a case regarding loss of his cheque book. The complainant has himself asserted in FIR that he had given "Qarz-e-Hassna" to the petitioner. Whether or not the ingredients of the offence are fulfilled needs further probe. In the facts and circumstances of this case it cannot be ruled out at this stage that the criminal case may have been registered to humiliate the petitioner. Whether or not ingredients of section 489-F of PPC are fulfilled needs further probe. The offence does not fall within the ambit of the prohibitory clause of section 497 of Cr.P.C. The petitioner admittedly does not have any criminal record. There is nothing on record to indicate that there is an apprehension that the petitioner may abscond. The petitioner is not required for affecting recovery. Moreover, incarcerating the petitioner will not serve any useful purpose. Refusal to confirm pre-arrest ad-interim bail may cause harassment and humiliation to the petitioner in the circumstances. The petitioner has joined investigations. Confirmation of pre-arrest bail is indeed distinguishable from granting a post arrest bail. Therefore, a case is made out for confirmation of bail in the light of the principles laid down by the august Supreme Court in case titled "*Rana Muhammad Arshad versus Muhammad Rafique and another*"[PLD 2009 S.C. 427].

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9. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

10. In the circumstances, as mentioned above, this petition is **allowed** and the ad-interim bail already granted to the petitioner is **confirmed**, subject to furnishing fresh bail bonds in the sum of Rs.50,000/- (Rupee fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

*Asad K/**