

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.332-B/2019
Malik Mehmood Ahmed
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.
	30.05.2019	Ch. Ishtiaq Azam Chohan Advocate for the petitioner Mr. Sadaqat Ali Jahangir, learned State Counsel with Iftikhar A.S.I.

Through the instant criminal miscellaneous application, the petitioner, Malik Mehmood Ahmed S/o Sharaf-ud-Din, seeks bail after arrest in case F.I.R. No.425, dated 14.11.2015, under Section 489-F of the Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station Sabzi Mandi , Islamabad.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 09.03.2019 and 17.04.2019. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case; that the dispute between the parties is of a civil nature; 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 ("Cr.P.C."); 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.

4. On the other hand, learned State Counsel vehemently opposed the petition by stating that the petitioner is nominated in the FIR 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 had remained an absconder for a period of almost four years which debars him from availing the concession of bail; that the petitioner was arrested after hectic efforts and if released on bail, there are chances of his escape. Learned counsel prayed for the bail petition to be dismissed.

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

6. The allegations against the petitioner as contained in the F.I.R. are that he had issued cheque No.10976598 dated 02.10.2014 for an amount of Rs.21,00,000/- in the complainant's favour as repayment of a loan and that the said cheque was dishonoured on presentation.

7. Although the petitioner is nominated in the FIR with the allegation that he had issued the cheque in question on account of repayment of loan, but in the FIR, there is no mention of the details/terms of loan which the complainant claims to have given to the petitioner, who in turn issued the cheque in question so as to fulfill his liability of repayment of loan. Dishonest intention for issuing the cheque in question is yet to be proved at the trial stage. Perusal of the orders passed by the learned Courts below show that

the petitioner was declined bail *inter-alia* on the ground that he had remained an absconder for almost four years. As regards the abscondance of an accused, it has been held by Apex Court in cases of Ibrahim Vs. Hayat Gul and others (1985 SCMR 382) and Muhammad Sadiq Vs. Sadiq and others (PLD 1985 SC 182) that in a case calling for further inquiry into the guilt of an accused person bail is to be allowed to the accused as of right and such right cannot be refused merely on account of abscondance of accused. Same view has been reiterated in case of Ikram ul Haq Vs. Raja Naveed Sabir and others (2012 SCMR 1273).

8. Even otherwise, the alleged offence i.e., Section 489-F PPC does not fall within the prohibitory clause of subsection (1) of section 497 Cr.P.C. 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. Furthermore, 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 like 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 post arrest bail.

9. The petitioner has remained incarcerated since 16.02.2019. Investigation in this case is almost complete and the petitioner is no more required for further investigation.

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.1,00,000/- 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 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