

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

Crl. Misc. No. 980-B/2020

Muhammad Yousaf

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.
	12.10.2020	Rao Abdur Raheem, Advocate alongwith petitioner. Mr. Aziz Ullah Marwat, Advocate for the complainant. Mr. Zohaib Hassan Gondal, State Counsel with Faiz Gondal, S.I.

Through this petition, petitioner seeks bail before arrest, in the case F.I.R. No.233/2020, dated 26.06.2020, offence under Section 489-F P.P.C., registered at Police Station Aabpara, Islamabad, alleging therein that the petitioner has issued cheque No.A-36420800 of Rs.30,00,000/-, Meezan Bank Tunsia Branch dated 15.07.2019 and the same on presentation was dishonoured.

2. The petitioner moved application for grant of pre-arrest bail before the learned Additional Sessions Judge (West), Islamabad, which was dismissed vide order dated 08.09.2020, hence the instant petition.

3. Learned counsel for the petitioner, inter alia, contended that the complainant/respondent is a travel company, before registration of this F.I.R. No. 233/2020 another F.I.R No. 1044 of 2017 was also registered at Police Station Cantt Dera Ismail Khan by the said company, wherein during the investigation, petitioner was found innocent; that the

petitioner is on bail in the said case and is facing trial; that instant F.I.R No.233/2020 is the continuation of the said transaction and the facts have already been narrated in the F.I.R No. 1044/2017, therefore, the petitioner is being vexed twice. Further contended that the respondent/complainant filed a suit Under Order XXXVII C.P.C for recovery of the amount. In the meantime the petitioner lodged F.I.R No. 58/2020 against one Mushtaq Ahmad, the owner of Waqar-e-Madina Travels & Tours for commission of theft of the cheques of the petitioner. Resultantly the respondent withdrew the suit un-conditionally. He further argued that after withdrawal of the said suit, instant F.I.R was registered against the petitioner with ulterior motives just to harass and humiliate the petitioner. It was also contended by the learned counsel that the respondent with the collusion of police has registered instant F.I.R just to defame the petitioner amongst the society and in the locality; that instant F.I.R has been lodged just for recovery of an amount by converting a civil litigation into criminal; that the punishment of the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C; that the petitioner cooperated with the I.O during the investigation. Lastly prayed for confirmation of pre-arrest bail.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant contended that during pendency of the trial in F.I.R No. 1044/2017, the petitioner made several requests for withdrawal of the case on the ground that he was ready to pay the remaining amount; that he voluntarily issued cheque bearing No.A-36420800 amounting to Rs.30,00,000/- which on presentation for encashment was dishonoured due to insufficient balance in the account of the petitioner. Further contended that petitioner lodged F.I.R No. 58/2020

under Section 380 P.P.C for commission of theft, which on interrogation was not found true, therefore, final report has been submitted therein. That no malafide on the part of complainant has been proved by the petitioner; that the petitioner on the very beginning day appeared before the police by submitting his defence in writing and also reserving that he would submit further documents and then failed to join the investigation, therefore, is not entitled for grant of pre-arrest bail.

5. Arguments heard, record perused with the able assistance of the learned counsel for the parties.

6. Perusal of the record reveals that the petitioner allegedly issued a cheque amounting to Rs. 30,00,000/- to the complainant, but later on, when it was presented for encashment, it was dishonoured.

7. Perusal of record reveals that the petitioner is nominated in the F.I.R. Malafide on part of police as well as the complainant is pre-requisite for the grant of extra-ordinary concession of pre-arrest bail to the petitioner. The stance of the petitioner is that he had lodged F.I.R No. 58/2020 wherein he had stated that the owner of company Mushtaq Ahmad has stolen his cheques of Habib Bank Ltd and he therefore, has already stopped his account, but in the present case the cheque issued was of Meezan Bank and the same was dishonoured due to insufficient balance in the account of the petitioner. The petitioner has failed to bring on record any circumstance about the registration of instant F.I.R which could establish that he has been roped malafidely in this case. There is nothing on record to show that the complainant had registered the case due to malafide or to harass the petitioner.

8. It is settled principle of law that 'pre-arrest bail' is different from that of 'post arrest bail'. Deeper appreciation of available record/evidence is not permissible at this stage. The ingredients of pre-arrest bail are distinguishable, then those of post arrest bail. There is nothing on record to show that the case was an outcome of enmity or that the criminal case has been registered to merely humiliate the petitioner. The petitioner has not been able to make out a case in his favour within the parameters laid down for the purposes of granting pre-arrest bail. Furthermore, there is no evidence on record to show that the police or the complainant has registered the case due to malafide or malice. This Court is guided by the law laid down by the Hon'ble Supreme Court in the cases of "*Murad Khan versus Fazal-e-Subhan and another*" [PLD 1983 Supreme Court 82], "*MeeranBux versus The State and another*" [PLD 1989 Supreme Court 347] and "*Ajmal Khan versus Liaqat Hayat and another*" [PLD 1998 Supreme Court 97]. Reliance is also placed in the judgment "*MalikNazir Ahmad Vs Syed Shamasul Abbas*" [PLD 2016 SC 171], wherein held as under;

"We have found the said approach adopted by the Hon'ble Judge to be militating against the scheme of the Code of Criminal Procedure because it had not been appreciated by the Hon'ble Judge that arrest of an accused person during the investigation of a criminal case is not meant only for effecting recovery from his possession but such arrest is made for the purposes of investigating the circumstances of the case and collecting evidence and recovery, where required, is only one of the components of the investigation. If the view held by the Hon'ble Judge of the High Court is allowed to hold the field then pre-arrest bail may not be refused to an accused person even in a case of rape or in a case of murder by throttling or even in a case of planning for terrorism where recovery may not be relevant and that surely was never the intention of the law.

9. Section 489-F P.P.C does not fall within the prohibitory clause, but no one can claim bail as a matter of right. In these circumstances, this Court is of the opinion that the petitioner is not entitled to the grant of anticipatory bail at this stage and consequently the ad-interim pre-arrest bail granted in favour of the petitioner is ***recalled*** and the petition is accordingly ***dismissed***.

10. 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.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

S.Akhtar