

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.218-B/2020

Mansoor Hussain
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Sajjad Haider Malik, Advocate.

Complainant by: Ch. Sajid Abdullah Sraa, Advocate.

State by: Ms. Atif Khokhar, State Counsel.
Mr. M. Zaman, A.S.I.

Date of Hearing: 03.04.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner Mansoor Hussain s/o Muhammad Ali, seeks post arrest bail in case FIR No.316/2019, dated 27.09.2019, registered for offence under section 489-F PPC, at Police Station Shalimar, Islamabad.

2. As per FIR, the case of the prosecution against the Petitioner is that he issued two cheques bearing No. CA000000026 dated 25.03.2019, of Faisal Bank for Rs.3,000,000/- and bearing No. CC0095815004 dated 20.04.2019, of Faisal Bank G-11 Markaz Branch for Rs. 5,000,000/- to the complainant in lieu of payment of Iron Rods supplied by the Complainant. Said cheques, when presented in bank for transfer of the amount, were dishonored due to insufficient funds. The complainant reported in the FIR that the petitioner is not only avoiding the payment but also threatening the complainant with dire consequences.

3. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (West), Islamabad which was dismissed vide order dated 10.03.2020 and thereafter, his similar request was also declined by the learned Additional Sessions Judge-X (West), Islamabad vide order dated 17.03.2020. Hence, this petition for bail after arrest.

4. Learned counsel for the petitioner/accused denied the allegations leveled in the FIR and submitted that petitioner has been involved in fake and fabricated case. Learned counsel referred the dates of registration of FIR and

commission of alleged offence as being 27.09.2019 & 20.06.2019, respectively, and submitted that the delay in registering the FIR is unexplained. Learned counsel further submitted that the complainant has registered various FIRs in different Police Stations with malafide intentions in order to harass the petitioner, he could have registered one FIR for all the alleged dishonored cheques. Learned counsel contended that the petitioner on several occasions pointed out to the complainant that he is supplying lesser quantity of material against the order, however, despite promise of supplying the difference of short supplied material, he proceeded to register FIRs against him alleging issuance of fake cheques. Learned counsel further contended that provisions of section 489-F PPC are not attracted as the petitioner is a building contractor and the respondent used to supply him sirya (iron rods) and the cheques were issued on account of business relation and thus, the case relates purely to business transaction and that as the cheques were issued as a guarantee, therefore, the question of dishonest motive does not arise. Learned counsel apprised that the petitioner has already paid the amount of Rs.2,000,000/- vide pay order dated 10.12.2019. Learned counsel argued that the offence, however, does not fall within the prohibitory clause of section 497 Cr.PC; investigation has been completed and no useful purpose would be served by keeping the petitioner behind the bars. Learned counsel lastly contended that the petitioner is previously non-convict, and the other FIRs against him are also fake; that in three cases the petitioner has already been granted bail. Learned counsel in support of his contentions relied on the cases titled *Muhammad Tariq versus The State and another* (2019 PCr. LJ 892), *Abdul Rasheed and another versus The State* (2019 PCr. LJ Note 123) and *Muhammad Shabbir versus The State and others* (2020 YLR Note 22).

5. Conversely, learned counsel for the complainant as well as learned State Counsel, *inter-alia*, contended that the petitioner/accused is a habitual offender as such 10 FIRs for the same offence have been registered against him and if he is released on bail he may repeat the same offence. Learned Counsel further argued that bail is a concession and not the right of the accused and in the present case the petitioner is not entitled for concession of bail.

6. I have heard the learned counsel for the parties as well as learned State Counsel and also perused the police record.

7. Analysis of the arguments of the learned counsel for the parties and facts of the case, transpires that the present case is a result of business dispute between the complainant who is the supplier of Sirya (Iron Rods) and the

Petitioner who is a building contractor. Moreover, as argued by the learned counsel for the petitioner, an amount of Rs. 20,00,000/- has been paid by the petitioner to the complainant vide pay order dated 10.12.2019, thus, the facts of the case *prima facie* suggest that the dispute between the parties is of civil nature which relates to business transactions. Further, the complainant has already filed a civil suit for recovery of amount allegedly payable by the petitioner/accused, which is pending. Even otherwise, deeper appreciation of facts and evidence through proper trial is required to prove the dishonest intention of the petitioner while issuing the subject cheques which makes the petitioner's case one of further inquiry falling within the ambit of Section 497(2) Cr.P.C. In this regard reliance is placed on the case law reported as ***Khiyal Saba and another Vs. The State and another (2020 SCMR 340)*** and ***Muhammad Junaid ur Rehman Vs. the State and another (2020 PCr.LJ 310)***.

8. It has further been apprised that as many as 10 other FIRs of similar nature have been registered by different Complainants against the petitioner for the same offence u/s 489-F PPC; out of which FIR No. 316/2019 (under consideration), FIR No. 102/2020 have been registered by the present complainant, whereas, FIR No. 12/2019 has been registered by Riaz Ahmad, father of the present complainant. It has also been observed from the police record that all the FIRs have been registered with the considerable delay after commission of the alleged offence. However, in neither of the case petitioner has been convicted and it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as ***Muhammad Roshan Vs. The State (2016 MLD 392)*** and ***Muhammad Sarwar Vs. The State and others (2016 YLR Note 110)***.

9. The petitioner is incarcerated since, 29.01.2020, and as per police record challan has already been completed and submitted in the trial Court thus, the petitioner is no more required for further investigation and his further detention would not serve any useful purpose, whereas, commencement of trial is no ground to refuse bail if even otherwise the accused becomes entitled to

the concession of bail. Even otherwise, the petitioner/accused in the present case has been imputed with offence under section 489-F PPC which does not fall within the prohibitory clause of section 497 Cr.P.C. The Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard has 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, guidance has been sought from the case law reported as **Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR, Page 1708)**, **Sikandar Zaman Vs. The State etc. (2011 SCMR, page 870)** and **Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR, page 1488)**. The judgment reported as **Muhammad Irfan Vs. The State (2015 PCr.LJ 129)**, relied upon by the learned counsel for the Petitioner supports his contentions as it has been held therein that “*section 489-F of PPC is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine guilt of criminal act and award a sentence, fine or both*”.

10. For the foregoing reasons and by following the principles laid down by the above referred judgments of the superior courts of the country as well as view taken by the Hon’ble Supreme Court of Pakistan in the case of **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)**, I am inclined to allow this bail petition. Hence, petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

11. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan/**