

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl.Misc. No.888-B/2020

Muhammad Moosa
Vs.
The State and another

| Serial No. of order/ proceeding. | Date of order/ proceedings | Order with signatures of judge, and that of parties or counsel, where necessary. |
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| 27.08.2020 | Mr. Waseem Ahmed Abbasi, Advocate for petitioner. Mr. Haroon Ur Rasheed, Advocate for respondent No.2. Mr. Hammad Saeed Dar, State Counsel alongwith Arshad, A.S.I. |
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The petitioner [Muhammad Moosa] seeks post arrest bail in case FIR No.41/18, dated 09.02.2018, under section 489-F, PPC, registered at Police Station Shalimar, Islamabad.

2. Brief facts of the case are that the complainant [Nasrullah Khan] filed an application against the petitioner on the basis whereof the abovementioned F.I.R was registered, wherein he alleged that he paid total amount of Rs. 5,266,000/- to the accused/ petitioner to buy property, but the accused failed to transfer any property in the name of complainant, however, in order to return the amount, he issued cheques bearing No.B-27362941 dated 11.11.2015 amounting to Rs.50,00,000/-, No. B-27362994 dated 15.12.2015 amounting to Rs.50,000/-, No.B-27363001 dated 04.01.2016

amounting to Rs.60,000/- & No.B-27363002 dated 06.01.2016 amounting to Rs.23,000/- to the complainant. It has been alleged that on presentation, the cheques were dishonoured due to insufficient funds in the account of petitioner.

3. Petitioner was refused grant of bail by the learned Courts below, hence, the instant bail petition.

4. Learned counsel for the petitioner submitted that the petitioner is innocent; that there was a partnership deed dated 16.08.2012 in between the parties, wherein the share of complainant was 65% and the share of petitioner were 35%; that after arising of dispute in the business, a Jirga was held on 15.04.2017 and the issue regarding issuance of cheque was settled. That petitioner has been falsely involved in the instant case and the F.I.R has been lodged after an inordinate and unexplained delay of one year; that the petitioner is no more required to the police for any probe. Lastly, prayed for grant of bail in favour of petitioner.

5. Conversely, learned counsel for respondent/ complainant vehemently opposed the grant of bail to the petitioner on the ground that issuance of cheque is admitted by the petitioner; that the petitioner remained absconder for a long time, therefore, he is not entitled for the grant of bail;

that after decision of the Jirga dated 15.04.2017, the decision of Jirga was not implemented; that cheque was issued by the petitioner for fulfilment of an obligation; that the petitioner is a habitual offender. Lastly, prayed for dismissal of the petition.

6. Learned State counsel also urged for dismissal of the petition.

7. Arguments heard advanced by the learned counsel for the parties and documents placed on record examined with their able assistance.

8. Perusal of the record reflects that the petitioner is facing incarceration since 26.07.2017. Challan has been submitted before the learned trial Court. The maximum punishment provided for the offence 489-F P.P.C is three years, which does not fall within the prohibitory limb of Section 497 Cr.P.C and keeping the petitioner behind the bars for an indefinite period would not serve any useful purpose and would amount to punishment before conviction, which is not permissible under the Criminal Jurisprudence. In cases, where the offence does not fall within the prohibit clause of 497 Cr.P.C, grant of bail is a rule whereas its refusal is an exception. Reliance is placed on the reported judgment titled as "Tariq Bashir Versus The State" (PLD 1995 SC 34) and "Anees Ahmed Khan Versus The State" (2020 P.Cr.L.J 268). The case of

petitioner does not fall within the exception enumerated in the cases. Moreover, investigation is complete and the petitioner is no more required for any further investigation. The bail cannot be withheld as a measure of punishment. So far as, the contention of the learned counsel for the respondent and the State counsel that the petitioner remained absconder for a long period, is concerned, it is well settled principle of law that bail cannot be refused to the accused, if he otherwise has a good case for grant of bail on merits, mere absconsion would not come in any way, while granting bail to the accused/ petitioner. Reliance is placed on the judgment reported as "Mitho Pitafi versus The State" (2009 SCMR 299). The record reflects that there was a business transaction in between the parties, after arising dispute in between them, a Jirga dated 15.04.2017 was held wherein, it was amicably resolved that all the original cheques and the written agreement, which were in custody of the complainant, would be returned to the petitioner/ accused. After resolving of the disputes by the Jirga after lapse of one year, the complainant filed an application for registration of F.I.R against the petitioner/accused. As far as involvement of petitioner in other cases of like nature is concerned, suffice it to say that mere

involvement without conviction in other cases cannot be considered a bar to extend the concession of bail, if the case is made out for grant of bail. Reliance is placed on the judgment reported as "Qamar Ali Mithu Versus the State (PLD 2012 SC 222). *Prima facie*, the dispute in between the parties seems to be of civil nature and the case of petitioner falls within the ambit of further inquiry in terms of Section 497 Cr.P.C.

9. For the abovementioned reasons, the instant petition is **allowed** and the petitioner is enlarged on bail after arrest subject to his furnishing bail bonds in the sum of Rs.1,50,000/- (one lac fifty thousand) within one surety and PR of the like amount to the satisfaction of learned trial Court.

10. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned trial Court, at the time of trial.

(GHULAM AZAM QAMBRANI)
JUDGE

Rana M. Ift