

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 189-B of 2020.

Ayesha Noreen.
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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15.07.2020. Mr Sajid Mehmood Chaudhry, Advocate alongwith the petitioner.
Sardar Jahanzeb Khan, Advocate for the complainant.
Mr M. Saeed Khan Sadozai, State Counsel.
Mr Rasheed, ASI with record.

The petitioner Ayesha Noreen wife of Muhammad Ghaffar has sought ad-interim pre-arrest bail in case, F.I.R. No. 38, dated 23.01.2020, registered under *section 489-F of Pakistan Penal Code, 1860* (*hereinafter referred to as "PPC"*) at Police Station Koral, Islamabad.

2. Brief facts as narrated in the FIR are that the petitioner had received amount as loan. It was alleged that she had returned an amount of Rs.0.16 million while for the remaining amount she had issued a cheque in favour of the complainant. On presentation of the said cheque before the concerned Bank, the latter refused encashment due to insufficient funds. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is innocent and has not committed the alleged offence; the petitioner has been falsely involved in the instant case; the instant case

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has been registered against the petitioner with ulterior motives of the prosecution; story as alleged in the FIR is false, frivolous and concocted; the witness of the alleged occurrence is brother-in-law of the complainant and is an interested witness; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner has been involved in the instant case with malafide intention of the complainant; there is delay of more than one and a half month in registration of the instant case; ingredients of section 489-F of PPC are not fulfilled; the petitioner has no criminal record; the petitioner has been involved in the instant case merely to harass and humiliate her; the petitioner has joined the investigations; the cheque was not issued as an obligation. The learned counsel has, therefore, urged confirmation of the ad-interim pre-arrest bail already granted to the petitioner.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Rasheed, ASI. They have opposed the grant of bail. It has been contended that; the parties were known to each other; therefore, a cheque was accordingly given to the complainant for fulfilling the obligation; the conduct of the petitioner brings her case within the exception to the general rule relating to offences falling within the non-prohibitory clause of section 497 Cr.P.C; the cheque has 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.

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 vs. 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 record reveals that occurrence had taken place on 06.12.2019, whereas the instant FIR was registered on 23.01.2020 i.e. after a delay of more than one and a half month. It is an admitted position that the parties are known to each other. They were participants in the affairs of a committee. There is nothing on record to show that there was an obligation against which the cheque was given. Whether or not ingredients of section 489-F of PPC are fulfilled needs further probe. The offence falls within the ambit of the non prohibitory clause. 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. In the circumstances of this case it cannot be ruled out that the criminal case may have been registered to harass or intimidate the petitioner. The dispute between the parties, prima facie, appears to be of a civil nature. Needless to mention that the arrest of the petitioner is not required for affecting recovery. The arrest of the petitioner in the instant case will be a mere formality. It has been held by the august Supreme Court vide order, dated 15.11.2016, passed in Civil Petition No. 371 of 2016 titled "*Muhammad Idrees versus Chairman NAB, Islamabad*", as follows;-

"Yes, pre-arrest bail could be confirmed on account of malafides but in the case of "Meeran Bux vs. State" [PLD 1989 S.C. 347], the scope of pre-arrest bail has been enlarged. In appropriate cases it would be confirmed if arrest of the accused, as in this case, appears to be a mere formality."

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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.200,000/- (Rupee two hundred 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/*