

ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD
Crl.Misc.No.787-B/2019
Muhammad Asim Afaq
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.
	31.12.2019.	Mr.Shaukat Mehmood Malik, Advocate for Petitioner. Rao Sheharyar, Advocate for Complainant. Barrister Ayesha Siddique Khan, State Counsel. Mr.Arshad, ASI PS Shalimar, Islamabad.

Through this Criminal Miscellaneous application, the Petitioner has prayed for his post arrest bail in Case FIR No.151 dated 09.05.2019 under Section 489-F PPC registered at Police Station Shalimar, Islamabad.

2. The brief facts referred in the instant FIR are that Muhammad Asim Afaq represented himself as a sole importer and distributor of International Henkel Products in Pakistan and required an investment for the purpose of distribution due to which complainant invested an amount of Rs.375,000,00/- in his business, however, petitioner has failed to give any profit to the complainant and claimed loss in the business due to which complainant demanded his amount from the petitioner who agreed to return the amount of Rs.2,93,00000/- and in this regard three post dated cheques were given to the complainant which were dishonoured on their presentation before the concerned bank.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that amount has been invested in the business of petitioner and cheques were issued as a security; that an agreement was executed between the parties regarding the investment for the purpose of 24 months period and as such it is a civil dispute which could only be resolved through a competent civil Court; that investigation has been completed and challan has been submitted in the Court on

21.11.2019 and petitioner is no more required for further investigation.

4. Learned counsel for the complainant contends that petitioner has not denied the issuance of post dated cheques rather has taken the plea of execution of an agreement between the parties and document appended with this petition is forged which was not executed by the complainant and another FIR under section 406 PPC has been registered against the petitioner, therefore, he is not entitled for any concession of post arrest bail.

5. Learned State Counsel contends that petitioner is habitual offender and challan has been submitted in the Court, therefore, he is not entitled for concession of post arrest bail, however, direction may be issued for early conclusion of the trial.

6. Arguments heard. Record perused.

7. Perusal of record reveals that petitioner has been arrested in case FIR No. 151 dated 09.05.2019 under Section 489-F PPC registered at Police Station Shalimar, Islamabad on the allegation that he has issued three post dated cheques in favour of complainant which were dishonored. The tentative assessment of record reflects that petitioner is relying upon an agreement with complainant through which an amount of Rs.375,000,00/- was invested by the complainant in the distribution network (International Henkel Products) for the period of 24 months whereas petitioner has issued three post dated cheques for return of the amount i.e Cheque No.11207693 dated 25.5.2018 amounting to Rs.21,50,000/-, Cheque No.11207694 dated 28.6.2018 amounting to Rs.2150000/- and Cheque No.11207695 dated 27.12.2018 amounting to Rs.250,0000/- drawn at Bank Al-Habib Limited and as such complainant side has denied the execution of

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agreement but this Court in post arrest bail application could not adjudicate upon the breach of terms of agreement or validity of the agreement. The entire record prima facie reflects that it is a civil dispute between the parties which could only be resolved through a competent civil Court which makes the case of petitioner that of further enquiry under section 497(2) Cr.P.C. The challan has been submitted in the Court on 21.11.2019 and trial is not in sight whereas petitioner is behind the bars since 28.10.2019 and no fruitful purpose would be achieved by detaining the petitioner behind the bars. The offence under which petitioner has been charged does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. Even otherwise the amount is admitted by the petitioner in his argument and as such there is no denial that amount of Rs.375,00000/- was not invested which reflects a civil dispute of business transaction. In such situation bail should be granted as a matter of right and refusal is an exception. Reliance is placed on case law titled Abu Bakar Versus The State etc (2019 P Cr.L.J Note 20), Anwar Masood Khan Versus The State etc (2018 P Cr.L.J 469), Riaz Jafar Natiq Versus Muhammad Nadeem Dar (2011 SCMR 1708), Zar Nasib Khan etc Versus The State etc (2018 YLR 443) and Shabbir Ahmad Versus The State etc (2018 YLR 459).

8. While considering the above position petitioner is entitled for post arrest bail, therefore, instant post arrest bail application is allowed and petitioner is admitted to post arrest bail subject to furnishing bail bonds in the sum of Rs.01 million with one surety in the like amount to the satisfaction of the learned trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE