

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 359/B/2019.**

Khalid Mehmood

Versus

The State, etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	14.06.2019.	Ms. Rubina Mehmood Khan Saddozai, Advocate for petitioner. Ms. Saima Naqvi, State Counsel. Sher Muhammad father of complainant/respondent No.2. Abdul Qadir, S.I, P.S. Karachi Company, Islamabad.

Through this Crl. Misc. petition, the petitioner  
has applied for post-arrest bail in case FIR No.137, dated  
12.04.2019, U/S 489-F PPC, P.S. Karachi Company,  
Islamabad.

2. Brief facts referred in this case are that instant  
FIR was got lodged by complainant/respondent No.2  
Saleem Muhammad Khan with the allegations that he  
paid an amount of Rs.1,50,00,000/- to Khalid Mehmood  
Jeweler (present petitioner) for purchase of gold and  
said Khalid Mehmood also acknowledged the receiving  
of amount before the Court and issued a cheque  
No.90408567 dated 30.12.2017 amounting to  
Rs.100,00,000/-, which was presented by complainant in  
his HBL I&T Centre, G-8 Branch, Islamabad account,  
however, the same was dishonoured and as such  
amount was not paid, even gold was also not provided.

3. Learned counsel for the petitioner contends that

six different FIRs have been got lodged by the complainant against the petitioner and petitioner has been granted bails in all the cases except in instant case; that Apex Court has granted post-arrest bail to the petitioner in similar cases through Crl. Petition No.1281/2018 and in one of the case this Court has granted post-arrest bail vide order dated 12.03.2019, passed in Crl. Misc. No.99/B/2019; that petitioner entered into agreement with respondent No.2 and cheque in question was issued as security vide clause 4 of the agreement dated 23.07.2016; that dispute among the parties is of civil nature and security cheque could not be used as tool against the petitioner; that petition is behind the bars since 16.07.2018 and is entitled for concession of post-arrest bail.

4. Conversely, father of complainant/respondent No.2 states that complainant entered into agreement with petitioner and had paid Rs.15 Million for the purchase of gold and petitioner has issued post-dated cheque, which was dishonoured and different FIRs have been lodged; that petitioner is habitual offender, who has deprived different individuals from their hard earned money.

5. Arguments heard, record perused.

6. From the cursory glimpse of record, it reveals that petitioner has been charged in criminal case FIR No.137, dated 12.04.2019, U/S 489-F PPC, P.S. Karachi Company, Islamabad, whereby a cheque No.90408567

dated 30.12.2017 drawn at HBL I&T Centre, G-8 Branch, Islamabad was issued by petitioner to the complainant, which was presented by the complainant in the bank and the same was dishonoured, as a result whereof instant FIR was lodged.

7. The record *prima-facie* reflects that cheque was issued by petitioner and complainant himself acknowledged the relationship for supply of gold and post dated cheques were issued by the petitioner. The record further reflects that complainant got lodged FIR No.147, dated 01.07.2018, U/S 489-F PPC, P.S. Morgah Rawalpindi, FIR No.207, dated 04.07.2018, U/S 489-F PPC, P.S. Quaidabad, Khushab, FIR No.243, dated 20.06.2018, U/S 489-F PPC, P.S. Cantt, Sargodha, FIR No.53, dated 13.02.2019, U/S 489-F PPC, P.S. Morgah Rawalpindi against the petitioner. The relationship of the parties *prima-facie* reflects a civil transaction, whereas petitioner is behind the bars since 16.07.2018 in this case and challan has been submitted in the Court and even charge has been framed and one of the prosecution witness has got recorded his evidence but fact remains the same that offence does not fall within the prohibitory clause of Section 497 Cr.P.C. and grant of bail in such type of cases is rule and refusal is an exception.

8. In similar type of charges in case FIR No.147/2018, registered at P.S. Morgah Rawalpindi, petitioner has been granted post-arrest bail by the

Hon'ble Supreme Court of Pakistan vide order dated 18.01.2019 with the following observations:-

*After hearing the learned counsel for the parties and going through the record we have noticed that the documents appended with Criminal Miscellaneous Application No. 2161 of 2018 and Criminal Miscellaneous Application No. 23 of 2019 clearly show that the cheques in issue had been given by the petitioner by way of "guarantee" or "security". It has already been clarified by this Court in the case of Mian Allah Ditta v. The State and others (2013 SCMR 51) that a cheque given by way of a security or guarantee does not attract the ingredient of section 489-F, PPC. Apart from that admittedly there is civil litigation pending between the parties regarding the same dispute and the same also involves divergent stands taken by the parties regarding the same cheques. The petitioner had been arrested in connection with this case about six months ago and in the cases of Zafar Iqbal v. Muhammad Anwar and others (PLJ 2010 SC 1087), Riaz Jafar Natiq v. Muhammad Nadeem Dar and others (2011 SCMR 1708) and Muhammad Sarfraz v. The State and others (2014 SCMR 1032) this Court had admitted the accused persons therein to post-arrest bail after they had already spent about six months in jail in connection with an offence under section 489-F, PPC. It is not disputed that an offence under section 489-F, PPC does not attract the prohibitory clause contained in subsection (1) of section 497, Cr.P.C. Grant of bail in such cases is a rule and its withholding is an exception. No exceptional circumstances has been highlighted before us so as to withhold the concession of bail from the petitioner, particularly at this stage of the case.*

*For what has been discussed above we have found the case against the petitioner to be a case calling for*

*further inquiry into his guilt within the purview of subsection (2) of section 497, Cr.P.C. This petition is, therefore, converted into an appeal and the same is allowed and consequently the petitioner/appellant is admitted to bail in the above mentioned criminal case subject to furnishing bail bond in the sum of Rs.1,00,000/- (Rupees one hundred thousand only) with two sureties each in like amount to the satisfaction of the trial court.*

9. Keeping in view the above background as well as principles laid down by the Apex Court in the above mentioned case, I am inclined to accept instant post-arrest bail application of the petitioner in this case subject to furnishing of bail bonds in sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Zahid