

**ORDER SHEET.**

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

**Criminal Misc. No. 362/B/2019.**

Nouman Ayub Qureshi

*Versus*

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.06.2019.	Raja Muhammad Zubair, Advocate alongwith petitioner. Mr. Sadaqat Ali Jahangir, State Counsel. Mr. Waseem Ahmed Abbasi, Advocate for respondent No.2. Muhammad Rashid, S.I. P.S. Aabpara, Islamabad.

Through this Crl. Misc., the petitioner Nouman Ayub Qureshi has applied for pre-arrest bail in case FIR No.74, dated 14.03.2019, U/S 489-F PPC, P.S. Aabpara, Islamabad.

2. Brief facts referred in the instant case got lodged by complainant/respondent No.2 Mudassar Ali are that petitioner issued three post dated cheques amounting to Rs.10,00,000/-, Rs.20,00,000/- and Rs.20,00,000/- respectively in the name of complainant from his bank account HBL Bani Chowk, Rawalpindi which were deposited in the ABL, Civic Centre Branch, Islamabad, however, the same were dishonoured on their presentation. Complainant further alleged in the FIR that another FIR No.195, dated 04.05.2018, U/S 489-F PPC, P.S. Aabpara, Islamabad was also been got registered by him against the petitioner regarding

dishonor of one of above cheque of Rs.20,00,000/-, however, on settlement and after intervention of the elders matter was settled whereby petitioner paid an amount of Rs.5,00,000/- in cash and has also issued post dated cheque of Rs.15,00,000/-, which was also dishonoured.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that petitioner's father Zahid Ayub and his uncle Tahir Ayub entered into an agreement with complainant Mudassar Ali on 30.09.2010 for construction of five story plaza on plot No.DD 232, measuring 15 Marla, Mouza Sohan Qasbati within the limit of Municipal Corporation, Rawalpindi, whereby market value of the said plot was Rs.8 Crore at the time of execution of agreement and complainant/respondent No.2 was under obligation to construct five story building and the rights will be sold on 50/50 basis and in case of any dispute arbitration clause has been mentioned in the said agreement, however, after the demise of petitioner's father Zahid Ayub, complainant has not constructed the building and has secured the post dated cheques from petitioner while compelling him through Police Station Bani on 28.03.2017 and obtained the above referred three cheques which are now dishonoured; that petitioner has filed civil suit for cancellation of those cheques and he has no relationship whatsoever to pay the said amount to

complainant/respondent No.2, even the entire matter is of civil nature.

4. Conversely, learned counsel for complainant/respondent No.2 contends that agreement was executed by the petitioner's father and uncle with complainant regarding construction of plaza and the same was constructed which was now sold out by the petitioner without paying the amount to the complainant; that a separate agreement was also executed by the petitioner in which all three cheques have been acknowledged which were issued dishonestly by the petitioner; that petitioner is not entitled for concession of pre-arrest bail.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that petitioner has been charged with the allegations that he has issued three post dated cheques amounting to Rs.50,00,000/- comprising of Rs.20,00,000/-, Rs.20,00,000/- and Rs.10,00,000/- respectively, which were presented by the complainant/respondent No.2 in his account ABL, which were dishonoured on their presentation as a result whereof FIR No.74, dated 14.03.2019, U/S 489-F PPC, P.S. Aabpara, Islamabad has been registered.

7. Tentative assessment of record reveals that petitioner's father and real uncle both entered into agreement for construction of commercial plot DD 232, measuring 15 Marlas, situated in Mouza Sohan Qasbati within the limit of Municipal Corporation, Rawalpindi,

however, as per the terms of agreement value of the plot was Rs.8 Crore at the time of execution of agreement dated 30.01.2010 and it was agreed that respondent No.2 shall construct the plaza and both the parties shall share benefit on 50/50% subject to sale of building, however, in case of any dispute parties will settle the matter through arbitration.

8. Even as per clause 12 of the agreement parties reserve their rights to initiate legal proceedings in case of disagreement. Petitioner has taken a stance that above referred agreement was executed between the complainant and his father, which is the main bone of contention whereby any liability if accrued is against late Zahid Ayub and petitioner has nothing to do with the said liability but complainant/respondent No.2 by using his influence called the petitioner in Police Station Bani, Rawalpindi on 28.03.2017 and by using the pressure of SHO, got issued three post dated cheques in his favour as well as an undertaking, however, petitioner has filed a civil suit for cancellation of the said cheques and agreement through civil suit titled **Nouman Ayub Qureshi and another Vs. Mudassar Ali**, which is pending before the Court of Sr. Civil Judge, Rawalpindi. The said stance of the petitioner regarding execution of agreement dated 30.09.2010 has been confronted to the complainant whereby he denied the said fact and states that petitioner has issued the cheques in continuation of liability of his late father.

9. The entire background of this case reveals that complainant initially entered into agreement of construction of building with his own financial sources on the land belonging to the petitioner's father Zahid Ayub and the said agreement contains arbitration clause for settlement of any dispute and even legal remedies are also referred in clause 12 and there is no direct liability upon the petitioner regarding the claim of the complainant. Even otherwise, complainant has failed to justify his position as to how and under what circumstances he managed to get issued three post dated cheques from the petitioner when the original liability is upon late Zahid Ayub.

10. This entire background creates ground of further inquiry in favour of petitioner and the malafide on the part of complainant as well as on police is *prima-facie* floating on the surface of record who under the garb of civil liability of late Zahid Ayub/father of petitioner got issued three cheques from the petitioner being son which is not permissible under the law. Even otherwise, the civil suit for cancellation of those cheques is pending before the competent Court and constructed building is in existence at the relevant place and complainant reserves the right to initiate recovery proceedings of his invested amount and as such the ingredients of bail before arrest are visible from the record.

11. It is trite law that bail could not be withheld as

punishment especially when the entire issue revolves around civil dispute of business transaction. Matter regarding loss suffered by the complainant is one of the controversies and civil suit is pending qua the disputed cheques and the maximum punishment provided under the law is three years, therefore, pre-arrest bail requires to be confirmed. Reliance is placed upon PLD 2005 Lahore 607 (Major Anwar-ul-Haq Vs. State) and 2005 P.Cr.L.J 1773 (Ali Murtaza Vs. State).

12. Even otherwise, nothing has to be recovered from the petitioner, who *prima-facie* has no direct liability to pay the amount of late father.

13. Keeping in view the above background, instant petition is allowed and ad-interim pre-arrest bail granted to petitioner vide order dated 27.05.2019 is hereby confirmed subject to furnishing of bail bonds in the sum of Rs.2,00,000/- (Rupees Two Hundred Thousand only) with one surety in the like amount with Deputy Registrar (Judicial) of this Court.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid