

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 741-B of 2020.

Asim Nadeem.

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. |
|-------------------------------|--------------------|--|
|-------------------------------|--------------------|--|

05.06.2020. Mr Sajjad Haider Malik, Advocate for the petitioner.
Syed Shajjar Abbas Hamdani, Advocate for the complainant.
Ch. Ehsan Majeed Gujjar, State Counsel.
Mr Hanif, SI with record.

The petitioner Asim Nadeem son of Khursheed Ahmed has sought post arrest bail in case, F.I.R. No. 115, dated 05.03.2020, registered under section 489-F of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Kohsar, Islamabad.

2. Brief facts as alleged in the FIR are that pursuant to a complaint a criminal case i.e. FIR No. 453, dated 26.10.2019 was registered under sections 420,468,471,34 of PPC. It was alleged that the petitioner had issued a cheque amounting to Rs.2.5 million in favour of the complainant to fulfil his contractual obligation. On presentation of the said cheque to the concerned Bank, the encashment was refused due to insufficient balance in the account. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; the petitioner has

not committed the alleged offence; story as narrated in the FIR is false, frivolous and vexatious; allegations against the petitioner are false; the petitioner is innocent and has been involved in the instant case with mala fide intention and ulterior motives; the petitioner has been incarcerated in the instant case for the last about one month; investigations qua the petitioner have been completed and he is no more required for purposes thereof; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner is previously non-convict; there is no obligation on part of the petitioner; the instant case has been registered against the petitioner just to harass and pressurize him; dispute between the parties is that of civil nature; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; ingredients of section 489-F PPC are missing; the alternate remedy is available to the complainant by invoking civil proceedings under Order XXXVII of CPC; punishment provided for the offence under section 489-F of PPC is three years; there is a delay of two and a half months in registration of the instant FIR; the case against the petitioner is that of further probe; there is no evidence against the petitioner; hence urges for the grant of bail.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Hanif S.I. and opposed the bail. They have contended that; cheque was issued by the petitioner in favour of the complainant; the petitioner is specifically nominated in the FIR; there was no delay in registration of the FIR; the cheque was presented to the Bank in time; the conduct of the accused brings his case within the exception to the general rule in case of offences falling within the non-

prohibitory clause of section 497 Cr.P.C; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial is going to be commenced shortly; the petitioner is also involved in three other cases; the petitioner is a habitual offender; hence prayed for dismissal of the instant petition.

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*" [2002 SCMR 1797] and "*Tariq Bashir and five other versus The State*" [PLD 1995 SC 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*" [2011 SCMR 1708].

8. It is the case of the prosecution that the petitioner had given the cheque pursuant to a compromise which had facilitated the latter in obtaining bail. However, no such order passed by a competent court confirming this factum has been placed on record. The learned counsel for the complainant has stated that payment of loan is more than the amount for which the cheque has been issued. Whether or not the ingredients of section 489-F of PPC are satisfied thus needs further probe. The petitioner has been incarcerated for the last about one month. The investigations qua the petitioner have been completed and, therefore, his continued incarceration is not likely to serve any beneficial purpose at this stage. The offence falls within the ambit of the non prohibitory clause. The quantum of the amount involved in a case registered under section 489-F of PPC cannot be treated as an exception to the general rule that in such cases bail shall be considered favourably. Even otherwise, section 489-F of PPC is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act, and award a sentence, fine or both as provided under section 489-F PPC. It is also important to note that the offence does not fall

within the prohibitory clause of sub-section (1) of section 497 Cr.P.C. There is nothing on record to indicate that there is an apprehension that the petitioner may abscond or tamper with the prosecution evidence. In the light of the principles and law laid down by the august Supreme Court, this Court is of the view that the petitioner is entitled to bail. Moreover, whether the petitioner had given the cheque dishonestly requires further probe.

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 petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs.500,000/- (Rupees five hundred thousand only) with one surety in the like amount to the satisfaction of 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/**