

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 709/B/2019.

Hassan Latif Khan

Versus

The State, etc.

Criminal Misc. No. 710/B/2019.

Hassan Latif Khan

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.
	20.11.2019.	Raja Inaam Amin Minhas and Ch. Waqas Zamir, Advocates for petitioner. Mr. Rabi Bin Tariq, State Counsel. Hafiz Munawar Iqbal Duggal, Advocate for complainant/ respondent No.2. Shahid, ASI.

By way of this common order, I intend to decide both the captioned Crl. Misc. post-arrest bail applications, filed by the petitioner, who has been nominated as accused in case FIR No.236, dated 24.06.2019, U/S 489-F PPC, P.S. Kohsar, Islamabad and case FIR No.195, dated 20.06.2019, U/S 489-F PPC, P.S. Ramna, Islamabad on the complaint of Muhammad Zarar Irshad, who got registered two separate FIRs for dishonour of cheque No.00000073, dated 26.12.2018 amounting to Rs.50,00,000/- HBL Rizwan Centre Blue Area Branch, Islamabad and cheque No.00000077, dated

26.12.2018 amounting to Rs.50,00,000/-, HBL G-10 Markaz Branch, Islamabad, which were dishonoured on their presentation.

2. Learned counsel for the petitioner contends that petitioner has falsely been implicated in this case despite the fact that complainant invested the amount in the company of petitioner and petitioner being Chief Executive of the company is only holding 2.5% shares and as per the terms of contract any dispute qua the investment has to be settled by way of arbitration as referred in the agreement which is a civil dispute in terms of clause 5 and even a suit for recovery U/O XXXVII CPC has been filed before the District Court, Islamabad; that petitioner was arrested on 08.10.2019 and challan was submitted in the Court on 15.10.2019; that offence with which petitioner has been charged does not fall within prohibitory clause of Section 497 Cr.P.C. and no useful purpose would be achieved while keeping the petitioner behind the bars.

3. Conversely, learned State counsel as well as learned counsel for the complainant contends that complainant has transmitted the amount in the personal account of petitioner, whereas petitioner has registered the company after receiving of amount and got executed a contract on behalf of MRF company by declaring himself as Chief Executive and competent to deal with the business affairs; that complainant/respondent No.2 has paid an amount of Rs.3 Million and Rs.1.1 Million

separately as investment to the petitioner against whom the petitioner has issued post dated cheques and petitioner is not entitled for the concession of post-arrest bail as he is habitual of doing such kind of fraud.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that complainant/respondent No.2 had acquaintance with the petitioner who claimed to be Chief Executive of MRF Oil Company and at his insistence complainant/respondent No.2 invested the amount of Rs.3 Million and Rs.1.1 Million separately which was transmitted in personal account of petitioner and later on an agreement was executed on 08.07.2017 between complainant and MRF Petroleum under DO Petroleum (Pvt.) Ltd. in which petitioner has acknowledged the receiving of payment which was transmitted through banking channel in his account being investment.

6. As per the contents of FIRs petitioner has issued post dated cheques which were dishonoured on their presentation as a result whereof two separate FIRs were registered.

7. The tentative assessment of record reveals that complainant has invested the amount and as such petitioner has received the said amount, even issuance of cheques has not been denied by the petitioner's side. As such relationship between parties is based upon business transaction whereby petitioner has failed to return the amount to the complainant as acknowledged

by him. The petitioner has also invoked the jurisdiction of Civil Court through Section 20 of the Arbitration Act, 1940 on the basis of clause 5 of the agreement executed between parties, whereas complainant has filed suit U/O XXXVII CPC for recovery of amount which is pending before District Court, Islamabad. All these facts disclose a civil dispute between parties. However, question of dishonestly issuance of cheques is yet to be determined by the trial Court and even the status of company is yet to be considered by the trial Court as to whether investment was referred in the company for the purpose of business or otherwise by the petitioner.

8. All these facts lead to an irresistible conclusion of further inquiry in terms of Section 497(2) Cr.P.C. which entitled the petitioner for concession of bail. Even otherwise, offence with which petitioner has been charged 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. Reliance is placed upon case reported as PLD 1995 SC 34 (Tariq Bashir and 5 others Vs. The State) and PLD 2017 SC 733 (Muhammad Tanveer Vs. State).

9. For what has been discussed above, both the bail petitions are allowed subject to furnishing of cash sureties in sum of Rs.3 Million and Rs.1.1 Million respectively with the learned trial Court. However, while considering the total number of prosecution witnesses referred in the challan, learned trial Court

seized with the matter is directed to conclude the trial within period of 02 months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid