

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.299-B/2014

MUHAMMAD IRFAN
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.
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11-08-2014 Sardar Muhammad Ali Khan Advocate for the petitioner.
Malik Zahoor Awan, Standing Counsel.
Mr Muhammad Raiz S.I./I.O.

The petitioner Muhammad Irfan son of Muhammad Irshad has sought post arrest bail in case, F.I.R. No.95, dated 18-3-2014, registered under Section 489-F, Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Tarnol, Islamabad.

2. The learned counsel for the petitioner contends; there was no business relationship between the accused; there is no agreement between the accused and the person to whom purportedly the cheque was issued; it was not a crossed cheque, rather a bearer cheque; the signature and the writing on the cheque are not that of the accused rather forged; the Investigating Officer also made an application for sending the cheque to the handwriting expert, therefore, making it obvious that there exist doubts that signatures may be forged; for reasons best known, the I.O. has not sent the cheque for verification of the signatures and hand writing; there is no prior conviction; the accused is incarcerated since 22-3-2014 and is no more required for investigation; the offence does not fall within the prohibitory clause under sub-section 1, of Section 497 of the

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Criminal Procedure Code (Cr.P.C). Reliance is placed, interalia, on 2009 S.C.M.R. 1488, 2011 S.C.M.R. 1708.

3. The learned Standing Counsel appeared alongwith Muhammad Riaz S.I. and opposed the bail. It is contended; it is evident from the record that there was an existing business relationship between the accused and the person to whom the cheque was issued; 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; the accused while recording his statement has admitted that he had also issued three other cheques. However, the learned Standing Counsel and the Investigating Officer could give reference of F.I.R. No.449 dated 11-12-2013, registered at Police Station Wah Cantt. District Rawalpindi.

4. The learned counsel for the petitioner admits the registration of the case at Police Station, Wah Cantt under Section 489- F of PPC and, in all fairness, further states that bail was refused by the trial court in the said case. The learned Standing Counsel states that a huge amount of Rs.37.5 million is involved and, therefore, in the circumstances the accused is not entitled to bail. The report under Section 173, Cr.P.C. has been filed on 26-3-2014.

5. In rebuttal, the learned Counsel for the petitioner contends that the amount for which the alleged cheque has been issued is not relevant for the purposes of grant of bail. He placed reliance on several judgments of various High Courts. It is further contended that the proceedings in which bail has been sought, is for determining the criminal guilt and not for recovery of the amount for which appropriate

proceedings can be initiated under the law, inter alia, Order-XXXVII of C.P.C.

6. After giving careful consideration to the arguments of the learned counsels, finding of this Court are as follows:

7. 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 Versus 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.

8. 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 vs 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 Vs. Muhammad Nadeem Dar and others (2011 SCMR 1708).

9. The F.I.R. in this case had been registered with a delay of three months. The prosecution has not placed on record any material to suggest that the accused has been previously convicted. The questions, whether there was a business relationship between the parties and any contractual commitment giving rise to the issuance of cheque, whether the signatures and the writing on the cheque are genuine, calls for further probe. At this stage and keeping in view the facts and circumstances in the present case, it would not be appropriate to be influenced by another case registered in Police Station Wah Cantt, as it is a cardinal principle of criminal law that a person is presumed innocent unless proved guilty. There is nothing on record to show that the accused has ever been convicted. The petitioner was arrested on 22-3-2014 and admittedly, the report under Section 173 Cr.P.C. has been submitted and trial shall proceed in accordance with law. The investigations qua the petitioner have already been finalized, therefore, his continued custody is not likely to serve any beneficial purpose at this stage. The amount involved in a case registered under section 489-F PPC cannot be treated as an exception of 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. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of PPC. It is also important to note that the offence does not fall within the

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prohibitory clause of sub-Section 1 of Section 497 Cr.P.C. In the light of principles and law laid down by the Honourable Supreme Court in cases where offences fall within the non-prohibitory clause of Section 497 Cr.P.C., this Court is of the view that the petitioner is entitled to bail.

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.200,000/- (Rupees Two Hundred Thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

Needless to mention that this is tentative assessment, which shall not affect trial of this case in any manner.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 12th of August, 2014.

JUDGE

Approved for reporting.

JUDGE

Luqman*

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