

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Crl.Misc.No.125-B of 2020  
Muhammad Waqas Ali  
**Versus**  
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>24.03.2020</b>	<b>Mr. Intizar Ahmad, Advocate for the petitioner</b> <b>Mr. Muhammad Shehzad Qureshi, Advocate for respondent No.2.</b> <b>Syed Ibrar Hussain, A.S.I.</b>

Through the instant petition, the accused/petitioner, Muhammad Waqas Ali S/o Liaqat Ali, seeks post-arrest bail in case F.I.R.No.425, dated 12.11.2019, registered under Section 489-F P.P.C. at Police Station *Sihala*, Islamabad. Earlier the petitioner's post arrest bail petitions were dismissed by the Courts of learned Judicial Magistrate and Additional Sessions Judge, Islamabad, vide orders dated 30.01.2020 and 07.02.2020, respectively.

2. Learned counsel for the petitioner submits that the petitioner has falsely been involved in this case with *malafide* intention and ulterior motives; that there is a substantial delay in lodging the F.I.R.; that the alleged offence is not made out against the petitioner as the cheque in question had not been issued with a dishonest intention; that the offence alleged to have been committed by the petitioner does not fall within the ambit of the prohibitory clause of Section 497 of the Criminal Procedure Code, 1898; and that the petitioner is in judicial custody since his arrest and not required for any further investigation. Learned counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

3. On the other hand, learned counsel for the complainant/respondent No.2 opposed the petition by stating that the petitioner is nominated in the F.I.R. with specific role of issuing the cheque in question; that the issuance of the cheque in question has not been denied by the petitioner; that the purchase receipt of the furniture issued by the complainant was in the name of the petitioner who issued the cheque in question, which was dishonoured on presentation; and that the issuance of the cheque in question together with its dishonouring *prima-facie* connects the petitioner with the commission of alleged crime. Learned counsel for the complainant prayed for the bail petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

5. The allegations against the accused/petitioner as contained in the F.I.R. are that he along with his co-accused Muhammad Kashif Naeem came to the complainant's furniture shop and purchased furniture for an amount of Rs.6,84,000/-. Out of this, an amount of Rs.1,50,000/- was paid and for the rest of the amount, the accused/petitioner issued cheque bearing No.1358924128 drawn at Allied Bank Limited D.H.A. branch Phase-II, Sector A Islamabad.

6. The petitioner is alleged to have issued the cheque in question on account of payment of furniture which he purchased from the complainant's shop. The purchase receipt appended with the record shows that neither was there any mention of date of purchase nor delivery date of the furniture on the said receipt alleged to have been purchased by the petitioner along with his co-accused. Furthermore, there is no mention of details/items of furniture alleged to have been

purchased by the petitioner from the complainant's shop. The cheque in question was dishonoured on 23.08.2019 whereas F.I.R. in question was lodged on 12.11.2019. Therefore, there is a substantial delay of more than two months in lodging the F.I.R. in question. All such factors make the case of the petitioner as one of further inquiry. The petitioner has remained incarcerated since 23.01.2019 and the investigation is said to have been completed.

7. In the case of Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR 1488), the Hon'ble Supreme Court has explained the principles for considering the grant of bail, where offences fall within non-prohibitory clause and 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. It is important to note that in the case at hand, the alleged offence under Section 489-F P.P.C. does not fall within the prohibitory clause of subsection (1) of Section 497 Cr.P.C. The offence with which the petitioner has been charged is punishable with three years imprisonment or fine or both. Therefore, grant of bail in such cases is a rule and refusal is an exception. Reference in this regard may be made to the law laid down in the case of Tariq Bashir Vs. The State (PLD 1995 S.C. 34). The exceptions laid down in the said case are not even attracted given the facts and circumstances of the instant case. In the light of law laid down by the Hon'ble Supreme Court regarding 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 the concession of post-arrest bail.

8. In this view of the matter, the instant petition is allowed and the petitioner is admitted to bail subject to

furnishing of bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice the case of either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned Trial Court unless exempted by the learned Trial Court. In case, the petitioner fails to appear before the learned Trial Court on any date of hearing, the bail shall stand cancelled.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**Qamar Khan**