

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

Criminal Misc. No.874-B/ 2020
Muhammad Moosa
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.
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06.08.2020	Mr. Waseem Ahmad Abbasi, Advocate for the petitioner. Ms. Khadija Ali, State Counsel, Sardar Nisar Ahmad, Advocate for respondent No.2. Sanaullah ASI with record.
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This is post-arrest bail petition by accused/petitioner (Muhammad Moosa) in case FIR No.12, dated 12.01.2018, under Section 489-F PPC, Police Station Shalimar, Islamabad.

2. According to the contents of FIR, on 16.5.2010, complainant struck a deal for the sale of plot No.212, Block F, Senate Avenue Cooperative Housing Society, Islamabad with the petitioner through an agreement; the latter in order to pay sale consideration, issued three post-dated cheques of Rs.300,000/-, which, on presentation stood dishonoured by the concerned bank.

3. Learned counsel contends that involvement of the petitioner is tainted with malafide on the part of complainant as there is inordinate delay in lodging the FIR; that the dispute is of civil nature, there was an agreement and that the responsibility to make good the payment of sale consideration is attributed to the brothers of the petitioner; that mere involvement in other cases without conviction and being remained at-large are no grounds to refuse bail when the case

otherwise is one of further inquiry; that the offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C; that investigation is complete and the petitioner is behind the bars for more than two and half months, therefore, entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as **2020 SCMR 717, 2017 SCMR 279, PLD 2017 S.C. 733, 2020 YLR Note-22, 2013 MLD 170, and 2018 P.Cr.L.J 469.**

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant repelled the above submissions. It is contended that issuance and dishonouring of cheques are admitted facts; that the petitioner had been keeping himself away from the process of law for more than two years; that he is involved in numerous other cases of like nature; that grant of bail in such like cases is not a rule of universal application as each case has its own facts and circumstances; that the business transaction and the agreement cannot be considered a bar to initiate criminal proceedings as the possibility of issuance of cheques with dishonest intention could not be ruled out at this stage.

5. Learned State Counsel added that petitioner is habitual offender; involved in several other cases of like nature; challan has already been submitted in the Court on 16.05.2018 and the trial is likely to commence, therefore, he is not entitled to the concession of bail. Learned state counsel referred **2018 YLR 1865 (Sindh), 2018 YLR 1554, 2018 YLR 338**

(Sindh), 2017 YLR 694 (Peshawar-(Abbotabad Bench) and 2019 P.Cr.L.J. 1759 (Sindh).

6. Arguments heard, record perused.

7. The punishment provided for the offence under Section 489-F PPC is up to three years which does not fall within the ambit of prohibitory clause of Section 497 Cr.PC. In such like case grant of bail is a rule and refusal is an exception. Reliance is placed upon case law reported as **2011 SCMR 1708**, whereby the Hon'ble Apex Court allowed bail in a case where the allegation against the accused was that he issued cheque of Rs.20 Million which on presentation was dishonoured. The Hon'ble Apex Court observed that the case does not fall within the prohibitory clause of Section 497 Cr.PC and the concession of grant of bail must be favourably considered and should only be denied in exceptional cases.

Same principle has been reiterated by the Hon'ble Supreme Court of Pakistan in a recent judgment reported as **"Muhammad Ramzan alias Jani V. The State and others" (2020 SCMR 717)**, wherein it is held that when alleged offence is outside the prohibitory clause of Section 497 Cr.P.C, grant of bail is a rule and refusal is an exception

8. Likewise, in case laws reported as **2020 P.Cr.LJ Islamabad 268** and **2020 P.Cr.LJ Islamabad 392** it is held that maximum punishment for the offence under section 489-F PPC was three years which does not fall within the prohibitory limb of Section 497 Cr.PC; person of the petitioner was not required for

further investigation; in such like cases grant of bail is a rule and refusal is an exception and that the bail could not be withheld as a measure of punishment.

9. In the present case, challan has already been submitted in the Court on 16.05.2018. The petitioner is behind the bars for more than two and half months. The circumstances of the case warrant exercise of discretion as the bail cannot be withheld as of punishment.

10. As far as involvement of the petitioner in other cases of like nature and his abscondance is concerned, suffice it to say that mere involvement without conviction in other cases cannot be considered a bar to extend the concession of bail if the case is made out. Reliance is placed upon case laws reported as *Qamar alias Mitho V. State (PLD 2012 SC 222)*, *Aftab Hussain Vs The State (2004 SCMR 1467)*, *Sher alias Shera and another Vs The State (1999 MLD 1643)* and *Karim Bux Vs The State (2001 PCr.LJ 1802)*.

11. In view of above, instant bail petition is allowed, petitioner, (Muhammad Moosa) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

12. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE