

JUDGMENT SHEET  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.161-B/2020**

**CH. MUHAMMAD NAJEEB.**

Versus

**THE STATE AND ANOTHER.**

*Petitioner by:* Mr. Tauqeer Hafeez Abbasi, Advocate.

*Complainant by:* Ms. Huma Jamil Babar, Advocate.

*State by:* Mr. M. Shahbaz Akhtar, ASI.

*Date of Hearing:* 19.03.2020.

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**LUBNA SALEEM PERVEZ, J.**

**C.M. No. 86/2020.**

This is an application seeking permission to place additional documents on record. The application is allowed subject to all just and legal exceptions.

**C.M. No. 87/2020.**

Exemption sought for is allowed subject to all just and legal exceptions.

**MAIN CASE:**

Through instant petition, Petitioner Ch. Muhammad Najeeb s/o Muhammad Sharif, seeks post arrest bail in case FIR No.236/2019, dated 30.05.2019, for offence under section 489-F PPC, registered at Police Station, Koral, Islamabad.

2. Prosecution's case against the Petitioner is that FIR was lodged by the Complainant against the accused/petitioner alleging therein that the accused/petitioner, who is close relative of complainant and his father and has business affiliation with his father obtained amount of Rs. 10,000,000/- (One Crore) and Rs. 14,500,000/- (One Crore Forty Five Lacs) from Complainant and his father respectively, for investment in the accused/petitioner's business. On 28.03.2019, accused/petitioner, in lieu of return of said amount, issued cheque amounting to Rs. 1000000/- (One

Crore) bearing No. D72702840 to the Complainant which on presentation was dishonored due to lack of funds in accused/petitioner's account. Hence, criminal case u/s 489-F was registered against the accused/petitioner.

3. The accused / petitioner applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed, vide order dated 27.01.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge-III (East), Islamabad, vide order dated 11.02.2020, hence, this petition for bail after arrest.

4. Learned Counsel for Petitioner, *inter-alia*, argued that Complainant in connivance with local police, in pursuit of malafide intentions and ulterior motives got registered the instant FIR which is false, frivolous and based upon concocted story. Learned Counsel contented that the dispute between the parties is of civil nature. Learned Counsel further contended that case of the Petitioner does not fall within the prohibitory clause of Section 497 Cr.P.C. He submitted that Petitioner is previously non-convict and belongs to a respected family, who is behind the bars since his arrest. Learned counsel argued that the investigation in the case is complete and petitioner is no more required for further investigation. Learned Counsel lastly contented that Petitioner is ready to furnish sufficient surety to the satisfaction of the Court and will also join the investigation as and when required by the Police.

5. Learned counsel for Complainant, *inter alia*, contended that the accused is a habitual offender having previous history of involvement in offences of similar nature. It was further contended that challan has already been submitted and the trial has also been commenced which is likely to be concluded in near future, therefore, petitioner is not entitled to bail at this stage. Learned counsel lastly contended that since, the accused is a habitual offender and trial has already been commenced, therefore, he is not entitled for concession of bail.

6. I have heard the learned Counsel for the parties and have also perused the police record with their able assistance.

7. Record reveals that the accused is behind bars since his arrest on 23.09.2019 and the Challan has already been submitted before the Court. As regards criminal history as alleged by the learned counsel for the Complainant is concerned, she was not able to produce any material relating to conviction of the accused petitioner in any case. So far as registration of other cases of similar nature against an accused is concerned, it would not be out of place to observe that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the

concession of bail. Moreover, maximum punishment provided for offence u/s 489-F is up to 03 years, which obviously does not fall within the prohibitory clause of Section 497 Cr. P.C. The Hon'ble Supreme Court of Pakistan through different authoritative pronouncements, time and again held, that when an offence does not fall within the prohibitory clause of Section 497 Cr.P.C, bail is a rule and refusal an exception. In this regard, guidance has been sought from the case law reported as **Riaz Jaffar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR, Page 1708), Sikandar Zaman Vs. The State etc. (2011 SCMR, page 870) and Zafar Iqbal Vs. Muhammad Anwar and others (2009 SCMR, page 1488).** In addition to above, it is also evident from the record that investigation against the accused/petitioner stands concluded and he is not required for further investigation, whereas, no useful purpose would be served from his incarceration.

8. So far as contention of the learned Counsel that trial has commenced which will be finalized soon, therefore, bail may not be granted to the Petitioner is concerned, it would suffice to say that it is settled law through different pronouncements of the superior Courts of the country that mere commencement of trial is no ground to refuse bail to an accused if otherwise he is entitled to this concession. Reference in this regard may usefully be made to the case law reported as **Muhammad Umar Vs. The State and another (PLD 2004 SC 477)** and **Zumarad Khan Vs. The State and another (2017 YLR Note 100).**

9. For what has been discussed above, this petition is accepted and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of **Rs. 3,00,000/- (Rupees Three Lac)** with one surety in the like amount to the satisfaction of learned Trial Court.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence of the petitioner by the trial Court.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*Adnan/\**