

Form No: HCJD/C-121

**ORDER SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Criminal Misc. No. 395-BC of 2021**

Muhammad Yasir Mehmood

***Versus***

Syed Sibte-e-Haider Zaidi, etc.

| <b>S.No. of order/ proceeding</b> | <b>Date of order/ proceeding</b> | <b>Order with signature of Judge and that of parties or counsel where necessary.</b>  |
|-----------------------------------|----------------------------------|---|
| (02)                              | 29.06.2021                       | Mr. Arif Khan Gigyani, Advocate for the petitioner.<br>Mr. Azhar Yousaf and Syed Tahir Abbas, Advocates for the respondent No. 1/accused.<br>Syed Shahbaz Shah, learned State Counsel.<br>Agha Yasir, ASI |

Through the instant petition, the petitioner seeks cancellation of bail before arrest granted to Respondent No. 1 in a case registered vide F.I.R. No. 92/2021, dated 21.02.2021, offence under section 489-F P.P.C., registered at police station Kohsar, Islamabad vide order dated 18.03.2021 passed by the Court of learned Additional Sessions Judge, West, Islamabad.

02. It is alleged that respondent No. 1 / accused issued a cheque amounting to Rs. 24,800,000/- to the complainant, which was

dishonoured on presentation, hence the F.I.R was registered.

03. Learned counsel for the petitioner, *inter-alia*, contends that issuance of cheque and its dishonouring is admitted and bail before arrest of the respondent No. 1/accused was not liable to be confirmed; bail confirmation order has been passed in violation of law laid down by the Hon'ble Supreme Court of Pakistan and has prayed for cancellation of bail before arrest granted to the respondent No. 1/accused by learned ASJ.

04. Conversely, learned counsel for the respondent No.1/accused states that cheque and its dishonored slip are already in possession of the Investigating Officer; there is no need to hand over the custody of the respondent No. 1/accused to the police and the bail confirmation order dated 18.03.2021 has rightly been passed and prayed for dismissal of petition for cancellation of bail before arrest.

05. Arguments advanced by learned counsel for the petitioner, learned counsel for

respondent No. 1, learned State counsel have been heard and record has been perused with their able assistance.

06. It is admitted that company of the respondent No. 1 executed an agreement with the complainant's company; an amount was liable to be paid by the respondent No. 1 / accused company to the complainant company, so a cheque bearing No. 1511427 dated 16.01.2018 was given to the complainant and the cheque was dishonoured by the bank on the ground that payment was stopped by drawer.

07. That issuance of cheque by respondent No. 1/accused and its dishonoring from the bank has been admitted by the learned counsel for respondent No. 1 / accused and I.O of the case.

08. In a case of "**Rana Abdul khaliq Vs. The State and others**", (2019 SCMR **1129**) the Hon'ble Supreme Court of Pakistan has observed while cancelling bail before arrest granted to accused of 489-F P.P.C by the Court of learned Sessions Judge and High

Court that:

*“Grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”*

09. In a case where bail before arrest of an accused of 489-F, PPC was confirmed by learned High Court, the Hon'ble Supreme Court of Pakistan in case of **"Malik Nazir Ahmed Vs. Syed Shamas-ul-Abbas and others"**, (PLD 2016 SC 171) has held that:

*“We note that respondent No. 1 had*

*been admitted to pre-arrest bail by the learned Judge-in-Chamber of the High Court primarily upon the ground that an offence under section 489-F, P.P.C. did not entail any recovery to be affected from the accused person and if recovery is not to be affected from an accused person in a criminal case then he cannot to be refused pre-arrest bail in such case. While holding so the learned Judge-in-Chamber had referred to his own order passed in the case of Abdul Sattar v. The State and another (PLD 2013 Lahore 173) wherein similar views had earlier on been expressed in some other case. We have found the said approach adopted by the Hon'ble Judge to be militating against the scheme of the Code of Criminal Procedure because it had not been appreciated by the Hon'ble Judge that arrest of an accused person during the investigation of a criminal case is not meant only for effecting recovery from his possession but such arrest is made for the purposes of investigating the circumstances of the case and collecting evidence and recovery, where required, is only one of the components of the investigation. If the view held by the Hon'ble Judge of the High Court is allowed to hold the field then pre-arrest bail may not be refused to an accused person even in a case of rape or in a case of murder by throttling or even in a case of planning for terrorism where recovery may not be relevant and that surely was never the intention of the law. While investigating an offence physical custody of an accused person may be required by the investigating agency for ascertaining and verifying the circumstances being alleged by the complainant party and even for confirmation of the circumstances of the case put forth and advanced by*

*the accused person in his defence. It cannot, therefore, be said with any generalization that an investigation into a criminal offence is meant only for effecting a recovery from the accused person and in a case where no recovery needs to be effected such accused person cannot be arrested or cannot be refused bail. Such generalization by the Hon'ble Judge of the High Court has, therefore, been found by us to be not a proper generalization to receive approval of this Court. In this view of the matter the legal position declared by the Hon'ble Judge in the reported case of Abdul Sattar (supra) is disapproved."*

And the order of confirmation of bail before arrest of an accused of 489-F was set aside and the case was remanded to the learned High Court for decision afresh in the light of the law/principle laid down by the Hon'ble Supreme Court of Pakistan.

10. Bail before arrest cannot be claimed as a matter of legal right in each case and also it cannot be expected that it would be granted in each case unless legal requirements laid down are met. It is to be kept in view that bail granted before arrest, causes setback in investigation and can stand as stumbling block in the way of recovery of incriminating articles.

11. It has been held in case of "**Sarwar Sultan Vs. The State and another**", (**PLD 1994 Supreme Court 133**) that:

*"Grant of pre-arrest bail means that accused is exempted from joining the investigation and by not joining the investigation, prosecution case may suffer for want of recovery of incriminating articles and other material, which may be necessary to connect the accused with commission of alleged crime".*

12. It is well settled law that relief of pre-arrest bail is granted only in those matters where it would appear that the registration of such cases was passed on enmity / malafide or where no offence was shown to have been committed on the very face of record. This is not the position in the instant case. Reliance is placed upon "**PLD 1983 Supreme Court 82, 1996 SCMR 74 and 1996 SCMR 71**".

13. In the recent order passed by Hon'ble Supreme Court of Pakistan in case titled as "**Kamran Attaullah and another V. The State passed in Criminal Petition No. 149-K of 2020**", it is held that:

*"It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative*

*procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information / evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all means”.*

14. There can be no escape from the fact that respondent No.1 / accused is nominated in the FIR; issuance of cheque by the company of the accused and its dishonouring by the bank have been admitted; learned counsel for the respondent No. 1/accused has not shown any malafide and ulterior motive against the complainant or police for the registration of FIR. The custody of respondent No. 1/accused is required for the purpose of recovery and investigation. There is sufficient material available on record to connect respondent No. 1/ accused with the commission of crime.

15. Considering the above facts and circumstances, I am clear in my mind that the respondent No. 1/accused has failed to make



out a case for grant of bail before arrest. Consequently, instant petition stands **accepted**. Bail before arrest granted to the accused vide order dated 18.03.2021 by the learned Additional Sessions Judge is hereby cancelled.

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

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Ahmed Sheikh

**Approved for Reporting**