

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 608-B.C./2022

FAWAD HASSAN ABBASI.

VS

ZAIN UL ABDIN AND ANOTHER.

Petitioner by: **Mr. Hammad Saeed, Advocate.**

Respondents by: **Mr. Faiz Bakhsh, Advocate along with Respondent No.1.**

State by: **Hazrat Younas, State Counsel
Mr. Hakim Khan, A.S.I., P.S. Kohsar.**

Date of Hearing: **15.09.2022**

SAMAN RAFAT IMTIAZ; J: Through the present Criminal Miscellaneous Petition, the Petitioner/Complainant (Fawad Hassan Abbasi, Assistant Manager Distribution & Support, Nippon Paint Pakistan Private Limited, Islamabad) seeks cancellation of bail granted to the Accused/Respondent No. 1 namely Zain-ul-Abidin vide Order dated 20.04.2022 (“**Bail Granting Order**”) passed by the learned Additional Sessions Judge, West-Islamabad in FIR No. 231/2022 dated 11.03.2022 registered for the offence under Sections 489-F, P.P.C., at Police Station Kohsar, Islamabad.

2. The facts as per the contents of the F.I.R. are that the Complainant is working as Assistant Manager Distribution and Support in Nippon Paint Pakistan (Private) Limited and is authorized to file the application. The Complainant's company is a multinational company which is engaged in the manufacturing of paint etc., and sells paint at wholesale rate all over Pakistan, whose head office is located at 100-G Commercial Area Phase 1 Defense Housing Authority Lahore and an office is opened at Plot No. 3/4/5/6, IJP Service Road, Near Shell Petrol Pump I-11/4, Islamabad. The Accused is a resident of House No. 11/9 Hussainabad Post Office Gulbahar, Peshawar, who was running his business under the name of Bin Dawood Paint and used to buy paint products on credit from the Complainant's company. The total liability of the Accused is Rs. 6,997,937/-. The Accused issued

a cheque bearing number 00000079 dated 21.02.2022 amounting to Rs. 6,900,000/- drawn on HBL Bank, Dilla Zak Peshawar for payment of outstanding amount which when deposited by the Complainant's company at Standard Chartered Bank, F-7 Markaz Branch, Islamabad was dishonored due to insufficient funds in the Accused's account. The same was reported to the Accused to which the Accused first used delaying tactics and later on completely denied the liability.

3. The learned counsel for the Petitioner argued that the grant of pre-arrest bail essentially requires consideration of malice or ulterior motives but neither mala fide was shown by the Accused on the part of the Complainant nor is there any discussion of such determination in the impugned Bail Granting Order dated 20.04.2022; that the Bail Granting Order has been passed only on the point of delay in registration of FIR which is less than 30 days and which even otherwise is not attributable to the Complainant as he approached the concerned Police Station for the registration of criminal case immediately; that the learned Court erred in law by concluding that the matter was based on business transaction as most cheques that are dishonored are given in relation to such transactions; and merely because the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C., does not merit the grant of the extraordinary concession of pre-arrest bail. The learned counsel in support of his contentions placed reliance on *Mian Muhammad Faisal Rasheed versus The State and others*, 2019 YLR 2379, *Rana Abdul Khaliq versus The State and others*, 2019 SCMR 1129, *Shah Alam versus The State*, 2018 YLR 338, *Mukhtar Ahmad versus The State and others*, 2016 SCMR 2064, *Juma Khan versus The State and another*, 2013 P Cr.L.J. 1584, and *Malik Safdar Ali versus Syed Khalid Ali and others*, PLD 2012 Sindh 464. The learned counsel lastly contended that the Honorable Supreme Court has held time and again that the bail granting order which is perverse, patently illegal, erroneous, factually incorrect and results in miscarriage of justice may be interfered with and in this regard referred the case *Ehsan Akbar versus The State*, 2007 SCMR 482.

4. On the other hand, the learned counsel for the Respondent No. 1 / Accused opposed the instant petition for cancellation of bail and submitted that the Bail Granting Order has not been obtained through suppression of any facts. He highlighted that there are four grounds for cancellation of bail i.e. (i) where there is apprehension of accused absconding, (ii) where there is apprehension of accused tampering with the prosecution's evidence, (iii) if the accused fails to join the

investigation or (iv) if the accused misuses the grant of bail, none of which are applicable in the instant case nor alleged by the Petitioner/Complainant. The learned counsel for the Respondent No. 1 further submitted that admittedly there is a considerable delay in registration of F.I.R. and no legal notice has been served upon the Accused prior thereto. The learned counsel in support of his contentions placed reliance on *Fazal Bibi versus Nasim Akhtar*, 2013 P.Cr.L.J. 595. The learned counsel termed the Bail Granting Order as lawful and justified and prayed for dismissal of the instant petition on behalf of the Respondent No. 1/Accused.

5. The learned State Counsel supported the Bail Granting Order and apprised that the Complainant has received some amount after registration of the F.I.R.

6. I have heard the learned counsel for the Petitioner as well as learned State Counsel and have also perused the relevant record including the Bail Granting Order.

7. The thrust of the arguments made by the learned counsel for the Petitioner was that the Respondent No.1 failed to satisfy the ingredients necessary for the grant of pre-arrest bail due to which he was not entitled to extraordinary remedy of pre-arrest bail which is considered a diversion from the usual course of criminal justice.

8. Be that as it may, courts are reluctant to interfere in the bail granting order even where such order is found not sustainable in the eyes of the law provided there is nothing to show that the accused has misused the concession of bail or in the absence of any other ingredient as listed in *Abdul Majid Afridi versus The State and another* 2022 SCMR 676 and *Sharif Khan versus The State*, 2021 SCMR 87, which are reproduced hereunder for convenience:-

- "i) *If the bail granting order is patently illegal, erroneous, factually incorrect and has resulted into miscarriage of justice.*
- ii) *That the accused has misused the concession of bail in any manner.*
- iii) *That accused has tried to hamper prosecution evidence by persuading/pressurizing prosecution witnesses.*
- iv) *That there is likelihood of absconson of the accused beyond the jurisdiction of court.*
- v) *That the accused has attempted to interfere with the smooth course of investigation.*
- vi) *That accused misused his liberty while indulging into similar offence.*
- vii) *That some fresh facts and material have been collected during the course of investigation which tends to establish guilt of the accused."*

However, the learned counsel for the Petitioner failed to show the existence of any of the above reproduced circumstances held by the Supreme Court as necessary for the purpose of cancellation of bail .

9. It was explained by the Supreme Court in *Rana Abdul Khaliq versus The State*, 2019 SCMR 1129 that the reason for pre-arrest bail not to be granted in any run of the mill criminal case is that it seriously hampers the course of investigation. However, in the instant case investigation is already complete and challan has been submitted on 28.04.2022 as such I am of the opinion that no useful purpose will be served by cancelling bail already granted to the Respondent No. 1/Accused and by putting him behind bars at this stage.

10. In view of above, the instant petition is hereby **dismissed** as being devoid of any merit.

(SAMAN RAFAT IMTIAZ)
JUDGE

Adnan