

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

Criminal Misc. No. 939-B/2020
Muhammad Tahir Bashir
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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15.09.2020	Mr. Shafqat Abbas Tarrar, Advocate for petitioner. Syed Shahbaz Shah, State Counsel. Mr. Usman Rasool Ghuman, Advocate for respondent No.2. Mr. Zafar Janjua, SI with record.
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Through the instant petition, petitioner (Muhammad Tahir Bashir) has prayed for post-arrest bail in F.I.R. No.214, dated 12.06.2020, under Section 408 and 411 PPC, registered at Police Station Lohi Bher, Islamabad.

2. Briefly, the allegations set-forth in the F.I.R. lodged by respondent No.2/complainant are that on 11.06.2020 at about 10:00 am, within the area of P.W.D, Punjab Cash & Carry the complainant had given Rs.5 Million to the petitioner, who was Accountant in the said shop for deposit of the same in Al-Meezan Bank but the petitioner did not deposit the same and fled away along with the said cash.

3. Learned counsel for the petitioner contends that no details of currency notes are mentioned in the FIR; that no witness from the public has been associated with the alleged recovery; that offence does not fall within the ambit of prohibitory clause; that investigation is complete and that petitioner is no more required for further investigation, therefore, entitled to the

concession of bail. Learned counsel placed reliance upon case laws reported as PLD 1995 SC 34, 2012 SCMR 573, 2002 SCMR 442, 2009 SCMR 1488, 2012 YLR 1944, 2011 MLD 1286, 2010 YLR 1744, 2009 MLD 614.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant argued that petitioner is specifically nominated in the F.I.R.; recovery was also effected from his possession; mere fact that the offence does not fall within the ambit of prohibitory clause is not sufficient to extend concession of bail; that sufficient incriminating material is available on file, therefore, he is not entitled to the concession of bail. Learned counsel placed reliance upon case laws reported as 2017 P.Cr.L.J. Note 43, 2017 P.Cr.L.J. Note 127 and 2012 YLR 2748.

5. Arguments heard, record perused.

6. The punishment provided for the offence under Section 408 PPC is up to seven years which does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. In such like case grant of bail is a rule and refusal is an exception. Reliance is placed upon 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 bail must be favourably considered and should only be denied in exceptional cases.

7. 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. The relationship of petitioner with the complainant appears to be that of master and servant and the petitioner was not more than a clerk or servant. The Hon'ble Peshawar High Court in identical situation, in Salah ud Din V. The State (2018 P.Cr.L.J. Note 165) granted post arrest bail in offence under Section 408 and 409 PPC.

9. In another case titled Saeed Ammar Bin Ali Alvi V. The State and another (2011 MLD 1286), accused of Section 408/381 PPC was allowed post arrest bail, where he was a proclaimed offender, trial was commenced and the accused was behind the bars for the last five months.

10. In the present case, petitioner is behind the bars since his arrest i.e. 18.06.2020. Investigation is complete and he is no more required for further probe. It is also matter of record that the petitioner retains no criminal record, therefore, his further incarceration would serve no useful purpose.

11. The case laws relied upon by learned counsel for the complainant entail distinct facts and circumstances, therefore, do not extend any help to the complainant.

12. In view of above tentative assessment, the petitioner is held entitled to the concession of post-arrest bail at this stage. Consequently, the instant criminal misc. petition is allowed, petitioner is admitted to post-arrest bail subject to furnishing of bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousands) to the satisfaction of learned Trial Court.

13. 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

Imran