

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

Criminal Misc. No. 863-B/ 2020

Azeem Arif Ali

Vs

The State, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

13.08.2020	Ch. Azmat Gujjar, Advocate, for petitioner, Ch. Muhammad Tahir Mahmood, AAG, Mr. Shahid Hussain Jasra, Advocate for complainant. Agha Yasir, ASI with record.
------------	--

Through this petition, petitioner (Azeem Arif Ali) has prayed for post -arrest bail in case FIR No. 152, dated 05.05.2020, under Section 489-F PPC, registered at Police Station Shalimar, Islamabad.

2. According to the contents of FIR, in the year 2017, complainant struck a deal for the purchase of plot for school in Chatta Bakhatawar, Islamabad for consideration of Rs. 300,00,000/-, with Azeem Arif (petitioner); that the petitioner sold the said plot to somebody else and on the asking of the complainant to return the amount, issued (4) four cheques, which on presentation stood dishonoured by the concerned bank.

3. Learned counsel for the petitioner contends that involvement of the petitioner is tainted with *malafide* on the part of complainant; that neither the petitioner issued the disputed cheques nor signed the same; that the story narrated in the FIR is false and concocted; that the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C; that there is no witness of the alleged transaction; that there is a

delay of three years in lodging the FIR; he is behind the bars since arrest; challan has been sent to the court and he is no more required for further investigation, therefore, entitled to the concession of post-arrest bail. Learned counsel placed reliance upon case laws reported as 2009 P.Cr.L.J. 155, 2011 YLR 2272 and 2011 YLR 1777.

4. On the other hand, learned AAG assisted by the learned counsel for the complainant repelled the above submissions. It is contended that the petitioner is nominated in the FIR with specific role; that petitioner is involved in four other cases of same nature; that huge amount is involved in the instant case, therefore, he is not entitled to the concession of post-arrest bail. Learned counsel placed reliance upon case laws reported as 2018 MLD 273.

5. Arguments heard, record perused.

6. 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 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.

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

7. Likewise, in case laws reported as 2020 P.Cr.L.J 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.

8. In the present case, challan has already been submitted in the Court on 10.06.2020. The petitioner is behind the bars for more than two and half months. These circumstances warrant exercise of discretion as the bail cannot be withheld as of punishment.

9. As far as involvement of the petitioner in other cases of like nature, suffice it to say that mere involvement in other cases without conviction 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).

10. As per ingredients of Section 489-F PPC, wherein it is mentioned that whoever dishonestly issues a cheque, suffice it to say that said deceitful intention is determined only after recording of evidence, which is duty of the trial Court and not of this Court because at bail stage, this Court has to make tentative assessment of the available record and deeper appreciation is not warranted.

11. In view of above, instant bail petition is allowed, petitioner (Azeem Arif Ali) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- (two lacs) 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**

A.R. Ansari