

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl.Misc. No.1000-B/2020

Raja Imran
Versus
The State and another

Serial No. of order/ proceeding.	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
----------------------------------	----------------------------	--

08.10.2020	Ch. Noor Khan, Advocate for petitioner. Barrister Taimur Malik & Muhammad Amin, Advocate for respondent No.2. Mr. Hammad Saeed Dar, State Counsel alongwith Irfan Asif, A.S.I.
------------	--

The petitioner [Raja Imran] seeks post arrest bail in case FIR No.266/2020, dated 21.07.2020, under section 489-F PPC, registered at Police Station Sehala, Islamabad.

2. Brief facts of the case are that the complainant [Ch. Iftikhar Ahmed S/o Ch.Said Muhammad] filed an application against the petitioner on the basis whereof the above mentioned F.I.R was registered, wherein he alleged that he paid total amount of Rs.53,75,000/- to the accused/petitioner as investment for purchasing of two shops, but the accused failed to transfer any property in the name of complainant and did not return the amount, however, in order to return the amount, he issued two cheques bearing Nos.00041333 dated 02.06.2020 & cheque No.00041335 dated 12.06.2020 to the complainant. It has been alleged that on presentation, the cheques were dishonoured due to insufficient funds in the account of petitioner/accused.

3. Petitioner was refused grant of bail by the learned Courts below, hence, the instant bail petition.

4. Learned counsel for the petitioner submitted that the petitioner is innocent; that the petitioner was not directly paid the alleged amount; that investigation has been completed and he is no more required to the prosecution for any probe into the matter; that the punishment of the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Lastly, prayed for grant of bail in favour of petitioner.

5. Conversely, learned counsel for respondent/ complainant vehemently opposed the grant of bail to the petitioner on the ground that the petitioner issued the cheques , which were later on dishonoured due to insufficient fund in the account of petitioner; that the cheques were issued dishonestly. Lastly, urged for dismissal of the petition.

6. Learned State counsel submitted that there is an affidavit of the petitioner wherein he has admitted that the respondent Iftikhar Ahmad had invested in their project and he was bound to return the amount, therefore, he issued the cheques which on presentation were not encashed due to insufficient fund in his account. He has also urged for dismissal of the petition.

7. Arguments advanced by the learned counsel for the parties heard and documents

placed on record examined with their able assistance.

8. Perusal of the record reflects that the petitioner is facing incarceration since 29.07.2020. Challan has been submitted before the learned trial Court. The maximum punishment provided for the offence under Section 489-F P.P.C is three years or with fine or with both which does not fall within the prohibitory limb of Section 497 Cr.P.C and keeping the petitioner behind the bars for an indefinite period would not serve any useful purpose and would amount to punishment before conviction, which is not permissible under the Criminal Jurisprudence. In cases, where the offence does not fall within the prohibitory clause of 497 Cr.P.C, grant of bail is a rule whereas its refusal is an exception. Reliance is placed on the reported judgment titled as "Tariq Bashir Versus The State" (PLD 1995 SC 34) and "Anees Ahmed Khan Versus The State" (2020 P.Cr.L.J 268). The case of petitioner does not fall within the exception enumerated in the cases. Moreover, investigation is complete and the petitioner is no more required for any further investigation. The bail cannot be withheld as a measure of punishment. The record reflects that there was a transaction and investment for purchase of two shops in between the parties. So far as dishonestly issuance of cheques by the petitioner is concerned, deeper appreciation at bail stage is not permissible, which would cause prejudice to either party. The guilt of petitioner will be determined after recording of evidence by the learned Trial Court.

9. For the abovementioned reasons, the instant petition is **allowed** and the petitioner is directed to be enlarged on bail after arrest subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (Two lac) within one surety and PR of the like amount to the satisfaction of learned trial Court.

10. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned trial Court, at the time of trial.

~~GHULAM AZAM QAMBRANI~~
JUDGE

S.Akhtar