

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

Criminal Misc. No. 789-B/ 2020
Hafiz Muhammad Huzaifa
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.
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03.	13.07.2020	Petitioner (Hafiz Muhammad Huzaifa) on ad-interim bail with Mr. Afzaal Qadeer Satti, Advocate, Mr. Muhammad Bilal Ibrahim, learned State Counsel, Malik Shaukat Mehmood, Advocate for respondent No.2/ complainant. Shazad Rafiq ASI with record.
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Through this petition, the petitioner has prayed for pre-arrest bail in case FIR No.502 dated 21.10.2012 under Section 489-F PPC, registered at Police Station Kohsar, Islamabad.

2. According to the contents of FIR, the complainant arranged three air tickets for the petitioner who in order to make payment, issued three cheques worth Rs.532,000/- which, on presentation stood dishonoured by the concerned bank.

3. Learned counsel contends that involvement of the petitioner is tainted with *malafide* on the part of complainant; that the cheques-in-question were issued as “*guarantee*” in respect of a business transaction as the petitioner was an employee of the company engaged in the business of Travels & Tours; that there was no direct liability against the petitioner; that the suit for cancellation of the said cheques under Section 39 of the Specific Relief Act is also pending and that the petitioner has severed his connections with the company and for this reason falsely involved in the instant case, therefore, entitled to the

concession of pre-arrest bail. Learned counsel placed reliance upon case laws reported as 2020 SMCR 451, 2016 SCMR 2046, 2014 SCMR 1369, 2013 SCMR 51, 2010 YLR 3206, PLD 2011 Lahore 169, 2008 MLD 717, 2007 MLD 1234, 2017 YLR Note 72 and PLJ 2017 CLC (Lahore) 977.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant repelled the above submissions. It is contended that the petitioner remained absconder; that another FIR of the same offence is also registered against the petitioner at Abbottabad; that suit of the respondent under Order XXXVII of the CPC for the recovery of alleged amount has already been decreed and execution petition is pending and that issuance of cheques and signatures thereupon are admitted.

5. Learned State Counsel added that the challan has been submitted in the Court on 18.05.2013, therefore, petitioner is not entitled to the concession of bail.

6. Arguments heard, record perused.

7. Perusal of record reveals that the petitioner was an employee of the Company, owned by one Liaqat Ali and said FIR had been lodged by Rizwan, who is also employee of said Liaqat Ali and the cheques were issued in connection with some business transaction, details whereof are available at Page-19 of the instant bail petition. The suit filed under Order XXXVII of the CPC for the recovery of the amount has been decreed and another suit for the cancellation of the disputed cheques is pending

adjudication before the court of competent jurisdiction.

The above facts depict that the parties had been in business relations which do not evade possibility of *malafide* and makes the case one of further inquiry. Guidance is sought from case law reported as “Muhammad Ismail Vs. The State” 2020 MLD 839 (Sindh) wherein it is held that *“the parties are already tagged in civil litigation; and, the applicant has since joined the trial and there is no complaint of his having misused the concession of interim pre-arrest bail earlier granted to the applicant.”* The same principle has been observed by the Hon’ble Sindh High Court in case law reported as “Moiz Naseem Vs. The State” (2019 YLR 53) wherein it is held that *“it is question of further inquiry that under what circumstances, this cheque was issued. Even otherwise the offence under Section 489-F PPC is punishable for a maximum period of imprisonment for three years or fine or both and does not fall within the prohibitory clause of section 497 Cr.P.C.”* In another case law reported as “Abdul Rasheed and another Vs. The State” [2019 PCr.LJ Note 123 (Sindh)], it was held that *“further, it would not be out of place to mention here that the object of section 489-F PPC is not to effect recovery of amount under the cheque and for that matter the complainant has always to approach the court of competent jurisdiction. The question of dishonest issuance of cheque and dishonest dishonour can also not be determined as the same require evidence which is only possible during trial.”* In all above quoted case laws, accused/petitioners were charged for offence under Section 489-F

PPC and pre-arrest bail was confirmed by the high Court. In the present case, there was no question of recovery of disputed amount and the allegation of issuance of cheques with dishonest intention requires recording of evidence.

8. The ground of absconsion has been answered in terms that the petitioner was an employee of the Company, carrying on business of Hajj and Umrah, and in order to revalidate his visa, travelled to Saudi Arabia and therefore, could not appear before the Court. In support of the stance, copies of the passport were annexed along with the instant bail application and it was also undertaken that the petitioner would join the process of the trial. Moreover, the challan has already been submitted in the Court on 18.05.2013.

9. In view of above, the instant bail petition is allowed. Ad-interim bail granted to the petitioner vide order dated 22.06.2020 is confirmed subject to furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

10. 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