

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.923-B/2020

KHANZADA
Versus
THE STATE AND ANOTHER.

Petitioner by: Mr. Mehmood Azam Balooch, Advocate.

State by: Ms. Talat Rizwan, State Counsel.
Mr. Azmat Hayat, S.I.
Mr. Manzoor Ahmad, S.I.

Complainant by: Nemo.

Date of Hearing: 26.08.2020.

LUBNA SALEEM PERVEZ; J: Through instant petition, Petitioner Khanzada s/o Muhammad Siddique, seeks post arrest bail in case FIR No.587/2019, dated 12.12.2019, for offence under section 489-F PPC, registered at Police Station Koral, Islamabad.

2. The Petitioner/accused applied for bail after arrest before Judicial Magistrate Sec. 30 (East), Islamabad which was dismissed, vide order dated 06.08.2020, whereas, his similar request was also declined by the learned Additional Sessions Judge-III (East), Islamabad, vide order dated 13.08.2020; hence, this petition for bail after arrest.

3. Complainant of the case opted not to appear despite proper service of notice on him.

4. The case of the prosecution against the Petitioner is that the petitioner who is Patwari in Moza Kotli Sattiyan, Rawalpindi, has issued cheque No. 172922513 dated 05.08.2019, amounting to Rs. 4,000,000/- drawn on MCB Bank, Jinnah Road, Rawalpindi, to the complainant on account of return of loan, however, sought three months time before encashing the same. But, said cheque was dishonored when presented in his account maintained with Soneri Bank Limited Lehtrar Road, Tarlai, Islamabad, due to insufficient balance. The complainant alleged issuance of cheque with dishonest intention and registered FIR against the petitioner.

al for the Petitioner submitted that the FIR has been registered on 12.12.2019, for alleged commission of offence on 26.09.2019, with delay of 76 days which has remained unexplained; that the petitioner has no business or family relations with the complainant, therefore, there is no question of obtaining or returning of loan to him; that in fact the cheque has been issued as a guarantee cheque on behalf of a friend in respect of some property transaction to Raja Nouman who is a property dealer; that the said Raja Nouman has also registered FIR No. 77/2019, dated 22.02.2019, regarding similar offence and the bail application is pending before the appropriate Court; that FIR Nos. 07/2017 & 17/2019 dated 29.03.2017 and 12.10.2019, respectively, have also been registered against the petitioner in terms of sections 471, 420, 468 & 409 PPC and 5/2/47 PCA trial whereof is pending before the Anti-Corruption Court Rawalpindi, in which he has been granted bail, vide order dated 13.08.2020 and 17.08.2020, respectively, by learned District & Sessions Judge/Special Judge, Anti-Corruption Court, Rawalpindi; that the petitioner has been arrested on 09.07.2020; that the investigation has been completed and, therefore, there is also no possibility of tempering with the record; that there is no previous conviction and there is no question of abscondence of the petitioner; that the case also does not fall within the prohibitory clause of section 497 Cr.PC. Learned counsel prayed for grant of bail to the petitioner by placing reliance on case titled *Muhammad Shabbir v. The State and another* (2020 YLR N 22 HC Lahore).

6. On the other hand, learned State Counsel present with the I.O. has vehemently opposed the petition for grant of bail to the petitioner and submitted that transaction of Rs. 4,000,000/- is involved for which the petitioner has issued a cheque with dishonest intention as the cheque of the same amount has also been issued by the same petitioner which has also been dishonored; that petitioner is a government employee against whom other FIRs/cases in terms of section 409, 420, 468, 471 PPC read with 5/2/47 PCA are pending in the Anti-Corruption Court; that though the petitioner has not been convicted so far, however, is a habitual offender in view of the FIRs registered against him; that the petitioner, therefore, is not entitled for concession of bail.

7. Arguments heard. Record perused.

8. Record reveals that the petitioner/accused has been arrested on 09.07.2020, in the present case. In the present case it has been observed from the perusal of the FIR that the petitioner has obtained loan of Rs. 4,000,000/- from the complainant on 20.07.2019, and issued cheque No. 172922513 dated 05.08.2019, to be encashed after three months if the loan is not returned by the petitioner. As per contents of the FIR the cheque has been presented in the Bank on 26.09.2019, after three months as committed by the petitioner which was dishonored due to insufficient amount in the relevant account. It has also been noted that the complainant has registered the FIR after the delay of 76 days for which no explanation has been incorporated in the FIR. Record further shows that the petitioner has been granted bail by the learned Special Judge Anti-Corruption Court, Rawalpindi, in FIR Nos. 07/2017 and 17/2019, therefore, as such, the petitioner till date has not been convicted in any case. Moreover, it is now well settled through different pronouncements of the superior courts of the country that mere registration of other criminal cases against accused, without conviction, does not disentitle him from the concession of bail. Reliance in this regard is placed on the cases reported as **Muhammad Roshan Vs. The State (2016 MLD 392)** and **Muhammad Sarwar Vs. The State and others (2016 YLR Note 110)**. The investigation appears to have been completed, as such, petitioner is not required for further investigation. Moreover, the case falls under the non-prohibitory clause of section 497 Cr.PC. The Honorable Supreme Court of Pakistan through different authoritative pronouncements, in this regard has time and again held, that when an offence does not fall within the prohibitory clause of Section 497 Cr.P.C, bail is a rule and refusal an exception. It has been held by this Court in the judgment re: **Muhammad Irfan vs. The State (2015 PCr.LJ 129)**, that “section 489-F of PPC is not a provision which is intended by the legislature to be used for recovery of an alleged amount. It is only to determine guilt of criminal act and award a sentence, fine or both”. Hon’ble Lahore High Court in a recent judgment titled as **Muhammad Shabbir v. The State and another (2020 YLR N 22 HC Lahore)**, relied upon by the learned counsel for the petitioner has observed as under:

"It may further be noted that the case against the present petitioner is almost entirely reliant on documentary evidence which, admittedly, is in the possession of the prosecution and clearly there is no possibility of the petitioner tampering with the same. The cheque in question is already in the custody of the court which is dealing with the suit filed by the respondent No.2 under Order XXXVII, Rule 11 of C.P.C. Keeping the petitioner incarcerated would tantamount to punishing him despite the fact that a person is presumed to be innocent until proven guilty. The Courts have invariably learned favourably in the granting of bail when the case is dependent upon documentary evidence and the same is in possession of the prosecuting agency. Reliance in this regard is placed on "Saeed Ahmed v. The State" (1996 SCMR 1132) and "Muhammad Nawaz v. The State through Chairman, NAB, Islamabad and another" (PLD 2008 SC 438). It has been observed by the august Supreme Court of Pakistan in the case of "Manzoor and 4 others v. The State" (PLD 1972 SC 81) as infra;

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

In the light of the facts and circumstances of the present case, the refusal of bail will tantamount to punishing the petitioner."

9. For what has been discussed above, this petition is accepted by placing reliance on the case law referred above as well as on principles laid down by the Hon'ble Supreme Court of Pakistan in the case of **Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)**, and Petitioner is admitted to post arrest bail, subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

*Junaid/**