

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

Criminal Misc. No. 905-B/ 2020  
Saif Ullah Hamayun  
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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31.08.2020	Mr. Muhammad Roheel Qureshi, Advocate, for petitioner, Syed Shahbaz Shah, learned Standing Counsel. Mr. Sajjad Haider Malik, Advocate for complainant. Asif Raza, ASI with record.
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Through this petition, petitioner (Saif Ullah Hamayun) has prayed for post -arrest bail in case FIR No. 38, dated 18.01.2020, under Section 489-F PPC, registered at Police Station Tarnol, Islamabad.

2. Briefly, the allegation set-fourth in the FIR are that the complainant having business of transport machinery entered into an agreement with the petitioner and pursuant to an undertaking, dated 04.10.2019 petitioner had to pay Rs.1,52,10,000/-, out of which on the same day i.e. 04.10.2019, he issued cheque of Rs.39,48,750/-, which on presentation stood dishonoured by the concerned bank.

3. Learned counsel for the petitioner contends that there is contradiction between the contents of agreement and the FIR; that petitioner is behind the bars since seven months while the punishment provided for the offence is upto three years; that investigation is complete and petitioner is not required for further probe; that there is no chance of escape, repetition of offence or tempering the prosecution evidence, therefore,

petitioner is entitled to the concession of post-arrest bail. Learned counsel placed reliance upon case laws reported as **2013 SCMR 51, 2009 SCMR 1488, 2012 YLR 879, 2018 P.Cr.L.J. 469, 2012 YLR 930, 2010 P.Cr.L.J. 1868 and 2008 MLD 1060.**

4. On the other hand, learned State Counsel assisted by 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 other cases of same nature including the one registered in AJ&K, therefore, there is a chance of his escape; that huge amount is involved in the instant case, therefore, he is not entitled to the concession of post-arrest bail.

5. Arguments heard, record perused.

6. The perusal of record reveals that the subject FIR was registered on 18.01.2020 and the petitioner was arrested on that very day and, therefore, is behind the bars for more than seven months, while the offence alleged entails punishment upto three years which, prima facie, reflects that the petitioner has already served approximately 1/3<sup>rd</sup> portion of the sentence.

7. 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 the offence alleged against the petitioner falls outside the prohibitory clause of Section 497, Code of Criminal Procedure, grant of bail in such like cases is a rule and refusal an exception.

8. 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.P.C. In this regard, reliance is placed upon a judgment reported as **"Riaz Jafar Natiq V. Muhammad Nadeem Dar"** **(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.P.C and the concession of bail must be favourably considered and should only be denied in exceptional cases.

9. Likewise, in case laws reported as **"Anees Ahmad Khan V. State"** **(2020 P.Cr.L.J Islamabad 268 )** and **"Khurram Shahzad V. State"** **(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.P.C; 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.

10. In the present case, after completion of investigation, challan has been submitted in the Court of competent jurisdiction on 23.01.2020, it means that petitioner is not required for further probe and his custody in jail would not serve any useful purpose. These circumstances also warrant exercise of discretion, as the bail cannot be withheld as of punishment.

11. 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)*.

12. 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 can only be determined 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.

13. In view of above, instant bail petition is allowed, petitioner (Saif Ullah Hamayun) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- (two lakhs) with one surety in the like amount to the satisfaction of the learned Trial Court.

14. 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