

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL PETITION NO. 294-L OF 2023

(On appeal against the order dated 01.03.2023 passed
by the Lahore High Court, Lahore in CrI. Misc. No.
80579-B/2022)

Abdul Rasheed

... Petitioner

Versus

The State and another

...Respondent(s)

For the Petitioner: Mr. Muhammad Zubair Khalid, ASC a/w
petitioner in person
(Via video link from Lahore)

For the Complainant: Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mirza Abid Majeed, DPG
Mr. Murtaza Bilal, SI

Date of Hearing: 24.08.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 01.03.2023 passed by the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 3420/2022 dated 21.10.2022 under Section 489-F PPC at Police Station Shadbagh, District Lahore, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he bought iron worth Rs.47,00,000/- from the complainant for which he gave two cheques amounting to Rs.500,000/- each to the complainant. However, when the cheques were presented to the Bank, they were dishonoured.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the

actual facts and circumstances. Contends that the petitioner and the complainant were running a joint business and the cheques were not issued towards repayment of loan or fulfillment of an obligation. Contends that maximum punishment provided under the statute for the offence under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C., therefore, the petitioner deserves to be granted bail.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant has defended the impugned order declining bail to the petitioner. It has been contended that the petitioner has deprived the complainant of a huge amount and he remained absconder for 02 years, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their assistance.

6. As per the contents of the crime report, the complainant was an iron merchant. The petitioner purchased iron worth Rs.47,00,000/- from the complainant and gave two cheques amounting to Rs.500,000/- each to him. However, when the cheques were presented to the Bank, they were dishonoured. However, it is the stance of the petitioner that the petitioner and the complainant had started a business and the cheques in question were given as a guarantee and the same were not issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC. The petitioner has placed on record a copy of the suit for rendition of accounts filed by him against the defendant before the Civil Court. A bare perusal of the same shows that the parties were probably running a business and the cheques were given as a surety and the same were not meant for encashment. We have noted that the cheques in question are of the year 2019 and according to the crime report the same were dishonoured in the year 2019. If that be so, we are unable to understand as to why the complainant kept quiet for three years and did not lodge the FIR on time. This *prima facie* supports the stance taken by the petitioner. Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC is not a

provision which is intended by the Legislature to be used for recovery of an alleged amount. In view of the above, the question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F PPC is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. This Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations. We have been informed that all the material is in documentary shape; the investigation is complete and the petitioner is no more required for further investigation. So far as the argument of the learned Law Officer about the absconsion of the petitioner is concerned, it is settled law that absconsion cannot be viewed as a proof for the offence and the same alone cannot be made a ground to discard the relief sought for. Reliance is placed on Rasool Muhammad Vs. Asal Muhammad (PLJ 1995 SC 477) & Muhammad Tasaweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53). Taking into consideration all the facts and circumstances stated above, we are of the view that the petitioner has made out a *prima facie* case for grant of pre-arrest bail.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order and confirm the ad interim pre-arrest bail granted to the petitioner by this Court vide order dated 26.07.2023.

JUDGE

JUDGE

Islamabad, the
24th of August, 2023
Approved For Reporting
Khurram