

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

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

**CRIMINAL PETITION NO. 717 OF 2023**

(On appeal against the order dated 11.05.2023  
passed by the Lahore High Court, Lahore in CrI. Misc.  
No. 27358-B/2023)

Zafar Nawaz

... Petitioner

**Versus**

The State and another

...Respondent(s)

For the Petitioner: Syed Muhammad Saqlain Rizvi, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State: Mirza Abid Majeed, DPG  
Mr. Muhammad Asif, SI

Date of Hearing: 22.08.2023

**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 11.05.2023 passed by the learned Lahore High Court, Lahore, with a prayer to grant post-arrest bail in case registered vide FIR No. 1155 dated 22.10.2021 under Section 489-F PPC at Police Station Samanabad, District Lahore, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that the petitioner was tenant of the complainant and did not pay rent for the period of one and half year. When the complainant demanded rent from the petitioner, he issued him a cheque amounting to Rs.16,50,000/- but the same was dishonoured on presentation to the Bank.

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 cheque was not issued towards repayment of loan or fulfillment of an obligation. Contends that even if the claim of the complainant is believed, even then at the most he can file a case before the Rent Controller for recovery of the rent. Contends that the petitioner is behind the bars for the last about six months and his further incarceration would not serve any purpose. 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 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 other cases of similar nature have also been lodged against him, 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 petitioner was tenant of the complainant and allegedly did not pay rent for the period of one and half year. When the complainant demanded rent from the petitioner, he issued him a cheque amounting to Rs.16,50,000/- but the same was dishonoured on presentation to the Bank. However, it is the stance of the petitioner that for the same claim, the complainant had lodged two more FIRs against the petitioner with an intent to extort money from him. It is further his stance that nothing is payable by him and the amount of the cheque in the present case is the bogus claim of the complainant. Admittedly, the petitioner was tenant of the complainant and *prima facie* any claim for recovery of rent falls within the domain of Rent Controller. In this view of the matter, the question whether the cheque was 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 petitioner is behind the bars for the last about six months. 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. Reliance is placed on Tariq Bashir Vs. The State (PLD 1995 SC 34). 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 that other cases of similar nature have been registered against the petitioner is concerned, mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a *prima facie* case. Reliance is placed on Moundar and others Vs. The State (PLD 1990 SC 934), Muhammad Rafiq Vs. State (1997 SCMR 412), Syeda Sumera Andaleeb Vs. The State (2021 SCMR 1227) & Nazir Ahmed @ Bhaga Vs. The State (2022 SCMR 1467). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

7. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
22<sup>nd</sup> of August, 2023  
Approved For Reporting  
**Khurram**