

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Jamal Khan Mandokhail  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Syed Hasan Azhar Rizvi

**Crl.PLA No.340/2024**

[Against the order dated 29.01.2024 passed by the Lahore High Court, Lahore  
passed in Crl. Misc No. 82102/B of 2024)

***Muhammad Anwar*** *...Petitioner(s)*

***Versus***

***The State & another*** *...Respondent(s)*

For the Petitioner(s) : Mr. Muhammad Amir Malik, AOR  
along with petitioner

For the State : Mr. Irfan Zia,  
Additional Prosecutor General, Punjab  
Abdul Sami, SDPO Sargodha  
M. Sami Jan, I.O

For the Complainant : Mr. Shahid Tabassum, ASC.  
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 03.06.2024.

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.-** Through the present petition, the petitioner seeks leave to appeal against the order of Lahore High Court, Lahore, dated 29.01.2024, (**Impugned Order**) whereby the pre-arrest bail has been declined to him in FIR No.1002 dated 17.10.2023 registered under Section 489-F PPC at the Police Station City Sargodha.

2. According to the gist of the aforesaid FIR lodged by Muhammad Pervaiz Ali Hassan (**complainant**), on 08.06.2023 the brother-in-law of the complainant purchased the property from the accused through the complainant. The complainant in this regard

made a payment of Rs. 20,00,000/- to the petitioner in the presence of witnesses and in return, the petitioner/accused Muhammad Anwar issued a cheque bearing number 02559350 of his account before the witnesses in favour of the complainant. That on the petitioner's demand, the complainant also gave him Rs.2,00,000/-. Subsequently, the petitioner failed to complete the transaction therefore the complainant demanded back his amount and compensation. On the specified date, complainant deposited the cheque in question in the account for its encashment but the same was dishonoured due to a dormant account.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case with mala fide intention and ulterior motives; that the petitioner sold the house to the brother-in-law of the complainant namely Attique and the cheque in question has been given as a guarantee and this fact has already been mentioned in the agreement; that the complainant has no nexus whatsoever with the petitioner; that the petitioner has already instituted a civil suit regarding the agreement in question before the civil court as he is the owner and in possession of the plot in question as per the said agreement and the complainant has registered a false and frivolous case against accused.

4. The learned law officer assisted by the learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the petitioner. They contend that the petitioner is specifically named in the FIR and he committed fraud with the complainant by issuing a cheque in question of his dormant account; that the petitioner attempted to deprive the complainant of a huge amount and issued a cheque dishonestly which was

dishonoured by the concerned bank; that during the investigation, the petitioner has been found guilty of the offence and lastly learned counsel for the complainant for dismissal of the instant petition.

5. We have heard learned counsel for the parties and perused the material available on the record.

6. The allegations outlined in FIR are that the complainant's brother-in-law purchased the property from the Petitioner on 08.06.2023 through complainant and complainant in this regard made the payment of Rs. 20,00,000/- to the petitioner in the presence of witnesses and in return petitioner issued cheque no. 02559350 of his account before the witnesses in favour of the complainant. To fulfil the petitioner's demand, the complainant also gave him Rs. 2,00,000/-. Eventually, the Petitioner failed to complete the transaction and complainant started to demand his amount along with compensation.

7. Primarily, the agreement in question is executed between Petitioner and Muhammad Attique regarding the plot. The perusal of said agreement indicates that the cheque in question was issued as "Guarantee" from the petitioner to Muhammad Attique. The complainant has failed to produce any receipt issued by the petitioner while receiving cash amount of 2,00,000/-. The tentative assessment of the record shows that it is not toward the fulfillment of any obligation but rather it was given as security. Prima facie, it does not attract the elements of section 489-F PPC.

8. This Court has held in the case titled *Mian Allah Ditta*,<sup>1</sup> that every transaction where a cheque is dishonoured may not constitute an offense. The foundational elements to constitute an

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<sup>1</sup> Mian Allah Ditta v. The State and others (2013 SCMR 51)

offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured.

9. Furthermore, this Court in the case of *Abdul Rasheed*,<sup>2</sup> has ruled as follows:

“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.”

10. Liberty of a person is a precious right which has been guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail; This court in the case of *Chairman NAB*,<sup>3</sup> has ruled as follows:

“To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial.”

11. For the above reasons, this petition is converted into an appeal and allowed. The impugned order of the High Court dated 29.01.2024 is set aside. The petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs. 100,000/- (one lac) with one surety in the like amount to the satisfaction of the trial Court.

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<sup>2</sup> Abdul Rasheed v. The State, etc [2023 SCMR 1948]

<sup>3</sup> [PLD 2022 SC 475]

12. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

13. Above are the reasons of our short order of even date.

**Judge**

**Judge**

**Judge**

Islamabad,

3<sup>rd</sup> June, 2024

APPROVED FOR REPORTING

*Paras Zafar\**