

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI  
MR. JUSTICE SYED HASAN AZHAR RIZVI

**CRIMINAL PETITION NO. 714 OF 2023**

(On appeal against the order dated 04.05.2023  
passed by the Islamabad High Court, Islamabad  
in CrI. Misc. No. 531-B/2023)

Noman Khaliq

... Petitioner

**Versus**

The State and another

...Respondent(s)

For the Petitioner: Mr. Asad Mehmood Abbasi, ASC  
Syed Rifaqat Hussain Shah, AOR

For the Complainant: In person

For the State: Mr. Rifaqat Ali Khokhar, ASC as state counsel ICT  
Mr. Muhammad Ishaq, Inspector

Date of Hearing: 11.08.2023

**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 04.05.2023 passed by the learned Islamabad High Court, Islamabad, with a prayer to grant post-arrest bail in case registered vide FIR No. 372/15 dated 08.10.2015 under Section 489-F PPC at Police Station Industrial Area, Islamabad, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he had business relations with the complainant. The complainant gave an amount of Rs.29,00,000/- to the petitioner for doing business on the pretext that whatever profit he will earn, he will share half of the same with the complainant. Allegedly, the petitioner earned a profit of

Rs.800,000/- and considering the half of the same to be of the complainant, the petitioner owed an amount of Rs.33,00,000/- to the complainant. The petitioner gave three cheques to the complainant for the said amount but they were 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 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 even if the claim of the complainant is believed, even then at the most he can file a civil suit for recovery of the amount. Contends that the petitioner is behind the bars for the last about five 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 assisted by complainant in person 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 08 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 petitioner and the complainant had business relations. The complainant gave an amount of Rs.29,00,000/- to the petitioner for doing business on the pretext that whatever profit he will earn, he will share half of the same with the complainant. Allegedly, the petitioner earned a profit of Rs.800,000/- and considering the half of the same to be of the complainant, the petitioner owed an amount of Rs.33,00,000/- to the complainant. The petitioner

gave three cheques to the complainant for the said amount but they were dishonoured on presentation to the Bank. However, it is the stance of the petitioner that the cheques were not issued towards repayment of loan or fulfillment of an obligation and the same were issued in respect of the joint business. Admittedly, the petitioner and the complainant were in business relations. This Court in the case of Abdul Saboor Vs. The State (2022 SCMR 592) has categorically held 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, rather for recovery of any amount, civil proceedings provide remedies, *inter alia*, under Order XXXVII of CPC. In this view of the matter, 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 petitioner is behind the bars for the last about five 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 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 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.500,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the  
11<sup>th</sup> of August, 2023  
Approved For Reporting  
**Khurram**