

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M B.A. No. 199-M/2017.

JUDGMENT

Date of hearing: **24.5.2017.**

Petitioner:- (Inamullah) by Qazi Farid Ahmad, Advocate.

Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Astt: Advocate General and Mr. Rashid Ali Khan, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- By his order dated 21.04.2017, the learned Additional Sessions Judge/Izafi Zila Qazi-III Swat rejected the bail petition for the detailed reasons mentioned therein in Cr.M B.A. No. 163/4 of the year 2017 arising out of case FIR No. 301 dated 21.03.2017 for the offences covered under sections 489-F, 420 PPC registered at Police Station Mingora District Swat.

2. This is an attempt for the grant of bail under the grounds taken in the missive of petition with the following outlook:-

"It is therefore, humbly prayed, by accepting the instant bail petition the accused may kindly be released on bail. Any other relief whatsoever be awarded to Petitioner if this august Court deems fit otherwise."

3. Qasim Khan came up with his report that after a cheque bearing No. 25978998 dated 03.03.2017 was dishonored from the respective Bank, in order to lodge an FIR the matter was registered through Mad No. 23 of the daily diary dated 17.03.2017. It pertains to fraud committed upon him for an amount of Rs. 9,40,000/- given for purchase of golden ornaments. When were not delivered, for the return of said amount a cheque was furnished. By this act the Petitioner is trying to digest handsome amount, who shall be brought to justice.

4. Having heard arguments of the learned counsel for the Petitioner, learned counsel for the complainant and learned A.A.G

for the State, record with their assistance gone through.

5. Learned counsel for the Petitioner relied on *PLJ 2016 Cr.C. (Peshawar) 617 "Haji Sardar Ali vs Yar Muhammad and others", 2014 P Cr. LJ 1060 (Peshawar) "Muhammad Iqbal Khan vs the State and another", 2011 SCMR 1708 " Riaz Jafar Natiq vs Muhammad Nadeem Dar and others" and 2014 YLR 497 (Sindh) " Syed Qamar Alam vs the State.* In the light of these precedents, specially in view of the Hon'ble Supreme Court of Pakistan made a prayer for grant of bail in favour of the Petitioner as mere pendency of criminal case under alike offences is no ground for refusal of bail. Inversely, learned counsel for the complainant referred to *2016 MLD 451 (Peshawar) " Jamal Shah vs the State and another", 2014 MLD 433 (Sindh) " Farhaj Ahmed vs the State", 2013 YLR 1603 (Lahore) " Sardar Bahadar Mughal vs the State and another", 2012 P Cr. LJ 1956 (Peshawar) " Makhdoom Zada Abdul Karim*

vs the State and another", 2012 P Cr. LJ 918 (Sindh) and "Muhammad Naseem vs the State". Thereby opposing the grant of bail on the pretext that the Petitioner is habitual being involved in similar kind of offences previously, besides a huge amount of the complainant is at stake, so at present in view of the dictums of the Hon'ble higher Courts no exceptional ground exist for grant of bail.

6. As far as the referral of cases registered against the accused/Petitioner and on its basis being not entitled to the concession of bail is concerned, suffice it to say, it pertains to previous report vide FIR No. 1003 dated 05.10.2016 under sections 489-F, 420 PPC registered at Police Station Mingora. In view of the *ibid* FIR the matter was later on patched up between the parties. However another FIR bearing No. 542 has been referred to, wherein accused/Petitioner has been given role to have shared common intention with other co-accused and has not been directly charged for a definite sum. When an accused being charged under

similar offence within the meaning of section 489-F PPC for dishonestly issuing a cheque, it has been held in case cited as **2014 YLR 497 (Sindh) " Syed Qamar Ali vs the State"** in the following manner:-

"mere pendency of another criminal case, or registration of another FIR against accused, could not be held as valid ground for refusal of bail; and unless it was brought on record that accused had been convicted in a case of alike nature. Accused having made out a case for grant of bail, he was admitted to bail, in circumstances."

7. Whereas section 420 PPC is bailable and under section 489-F PPC when an accused is charged he might be refused bail if at all there are reasons to believe that some exceptional reason exist for refusal. In this case, there is no specific reason available on the record as to why accused/Petitioner being involved in offence of alike nature the punishment of which would entail to three years would be refused bail, if otherwise he is not previously convicted under the similar type of case.

8. The Petitioner is entitled to the concession of bail. He is asked to furnish bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

9. It would not be out of place to mention here that the observations rendered above are purely tentative in nature by all counts and the learned Trial Court Judge would be at liberty to apply his own judicial mind without being prejudice to the findings delivered in this judgment.

These are the reasons of my short order of even date.

Announced
Dt: 24.05.2017.

JUDGE