

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.M.BA. No.248-D/2017.

Ghulam Rabbani
Vs.
The State etc.

JUDGMENT

Date of hearing: **28.8.2017.**

Appellant-Petitioner By: Mr. Saleem Ullah Khan
Ranazai Advocate.

Respondent By: Mr Bahadar Khan Marwat Advocate
and Mr. Adana Ali A.A.G

SHAKEEL AHMAD, J.- Through the instant criminal miscellaneous bail petition No.248-D of 2017, petitioner Ghulam Rabbani has sought post arrest bail in case FIR No.364 dated 17.4.2017, under Sections 489-F PPC, registered at police station Cantt:, D.I.Khan.

2. The allegation against the petitioner is that he had issued cheque bearing No.5647774 of Rs: 20,00,000/- to the complainant, which was dishonoured when presented to the bank concerned.

3. The learned counsel for the petitioner mainly argued that the offence with which the accused-petitioner is charged, is not hit by the

restrictive clause of Section 497, Cr.P.C, therefore, he is entitled for the concession of bail. He placed reliance on order dated 18.5.2015 of this Court in Cr.MB. No.167-D/2015, wherein bail was granted to the accused.

4. As against that, the counsel for the complainant submitted that the accused has specifically been charged for issuing the cheque which was dishonoured on presentation, which reflects his dishonest intention. He further argued that though the offence is not hit by restrictive clause of Section 497, Cr.P.C, but is non-bailable and the accused cannot claim bail as a matter of right. The learned Asstt. A.G. representing the State, supports the contention of learned counsel for the petitioner.

5. Arguments heard and record perused.

6. Allegation against the petitioner is that he issued a cheque bearing No.5647774 of Rs: 20,00,000/- to the complainant, which has allegedly been dishonoured on presentation before the bank concerned. As alleged in the FIR, there was business dealings between the parties and the petitioner has taken Rs: 20,00,000/- from the complainant as loan and he had issued the cheque for re-payment of the said

amount. The business dealing between the parties is admitted, as in the instant case, the Courts normally allow bail in such like cases. In this respect reference can well be made to the case titled **“Muhammad Akbar Vs. The State” (2005 P.Cr.L.J 677)**, wherein it was held as under:-

“6. From the perusal of the record it reveals that it is a case of business dealing and transaction between the petitioner and the complainant; therefore, the matter between the petitioner and the complainant is that of civil nature. Moreover, the offence against the petitioner does not fall within the prohibitory clause. The maximum punishment provided for the offence is three years whereas the petitioner is behind the bars for the last fourteen months and there is no progress in the trial and the continued custody of the petitioner is not likely to serve any beneficial purpose rather same would amount to punishment before conviction, which is not permissible under the criminal jurisprudence. Moreover, where the business transactions are admitted the Courts have allowed bail and in this regard, reliance is placed on the cases of Muhammad Akbar v. The State 2005 P.Cr.L.J 677, Rana Ehsan v. The State 2004 YLR 2675, Major Anwar-ul-Haq v. The State PLD 2005 Lah. 607 and Haq Nawaz Khan v. The State 2006 YLR 50”.

In similar situation, the Honourable Supreme Court in a recent judgment **“Muhammad Sarfaraz Vs. The State” (2004 SCMR 1032)**, held that:-

“The complainant however alleges that this was a ‘self cheque’ and therefore, it was issued to him and accordingly the dishonouring of the cheque would attract the provisions of section 489-F, P.P.C. He has also mentioned that the amount covered by the cheque was paid by the complainant to the petitioner from time to time for the purposes of the business and it is for the return of such amount. Contrarily, on further query, there is no evidence available with the complainant as to how, when and by what process various amounts were paid to the petitioner for business purposes. To that end, these aspects of the matter have not been taken into consideration by the learned High Court while declining bail to the petitioner. We find these contours of the case to be quite conspicuous and relevant entitling the petitioner to bail when the case does not fall within the prohibitory clause and the maximum sentence for the offence under section 489-F, P.P.C. is three years. At the same time, the petitioner is behind the bars for the last about six months”.

7. The offence with which the petitioner is charged does not fall within the prohibition contained in section 497(1), Cr.P.C. as the maximum punishment for the offence under Section 489-F PPC is three years or fine or both and in such like cases, grant of bail is rule, while refusal is an exception, as held by the apex Court in case titled **“Riaz Jafar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR 1708)**, wherein it was held as under:-

*“Thus keeping in view the law laid down in the case of **Zafar Iqbal V. Muhammad Anwar and others**” (2009 SCMR 1488) ordaining that granting bail must be favourably considered and should only be declined in exceptional cases”.*

8. Bail can only be declined in exceptional cases, which are to be taken into consideration depending upon each case. In such like case which do not fall within the prohibition contained in Section 497, Cr.P.C, exceptional circumstances may be i.e. (a) where there is likelihood of abscondence of the accused (b) where there is apprehension of tampering with the prosecution evidence; (c) where there is danger of the offence being repeated, if the accused is released on bail; and (d) where accused is a previous convict, this principle has been enunciated in the judgment of Honourable Supreme Court of Pakistan in case titled **“Subhan Khan Vs. The State”** (2002 SCMR 1797). No exceptional circumstances exist in the instant case to refuse bail to the accused. Moreso, the petitioner was arrested on 22.4.2017, he is behind the bar for the last more than four months, the investigation in the instant case is complete and he is no more required to the investigating agency for the purpose of investigation

and no useful purpose would be served, if he is kept in jail.

9. In view of what has been discussed above, this bail petition is allowed and the accused is directed to be released on bail subject to furnishing bail bonds in the sum of Rs:3,00,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties must be local, reliable and men of means.

Announced.
Dt: 28.8.2017.

JUDGE