

JUDGMENT SHEET

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

Cr.M B.A. No. 387-M/2017.

JUDGMENT

Date of hearing: **13.09.2017**

**Petitioner:- (Muhammad Ibrahim) by Mr.
Rashid Ali Khan, Advocate.**

**Respondents:- (the State & 1 another) by Mr.
Rafiq Ahmad, Asstt: Advocate General and Mr.
Safdar Khan, Advocate.**

MOHAMMAD IBRAHIM KHAN, J.- The order dated 29.07.2017 passed by the learned Judicial Magistrate-1/Illaqa Qazi Timergara describing the facts, *"the Petitioner being habitual offender, on his implication in another case regarding dishonor of his cheque and being proceeded against under section 512 Cr.P.C, prima facie connected with the commission of offence,"* thereby application for the grant of post arrest bail was dismissed.

8-112- 2. The matter was then taken up before the Court of learned Sessions Judge/Zila Qazi Dir Lower at Timergara in case No. 260 of

2017, the fate of the application was decided in the light of observations of the learned Judicial Magistrate, *"the offence being punishable for 3 years but because of involvement of the Petitioner previously in similar nature of offences,"* the application was disallowed.

3. This bail petition is, therefore, preferred in case FIR No. 562 dated 18.12.2016 under section 489-F PPC registered at Police Station Talash District Dir Lower, taking grounds taken from Serial (i) to (x) based the prayer:-

"It is, therefore, humbly prayed that on acceptance of this petition the accused/Petitioner may kindly be released on bail till final disposal of the instant case."

8-12-17
4. Wahid Murad making his report in the manner having business pursuits following sale of vehicles, he was handed over a cheque for an amount of Rs. 14,30,000/- by the accused/Petitioner Muhammad Ibrahim, which

was dishonored because of insufficient funds in the account of the accused/Petitioner.

5. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned Asstt. Advocate General for the State, record with their valuable assistance gone through.

6. Learned counsel for the Petitioner placed reliance on 2014 YLR 497 (Sindh) “Syed Qamar Alam vs the State”, 2013 MLD 1238 (Lahore) “Naseer Ahmad vs the State and others”, PLD 2013 Lahore 173 “Abdul Sattar vs the State and another”, unreported judgment of this Court delivered in Cr.M B.A. No. 215 of 2017 “Ezat Khan vs the State & 1 another, 2014 P Cr.LJ 1060 (Peshawar) “Muhammad Iqbal Khan vs the State and another”, 2017 P Cr.LJ Note 34 (Peshawar) “Haji Sardar Ali vs Yar Muhammad and another”, 2011 SCMR 1708 “Riaz Jafar Natiq vs Muhammad Nadeem Dar and others” and unreported judgment of this Court delivered in

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Cr.M B.A. No. 161-M of 2017 “ Sabz Ali vs the State” and thereby prayed for the grant of bail. Inversely, learned counsel for the complainant assisted by learned A.A.G. appearing on behalf of the State referred to 2009 SCMR 174 “ Shameel Ahmed vs the State.”. They vehemently opposed the grant of bail in favour of the Petitioner as he has been previously involved in alike offences thus his conduct squarely falls within the ambit of habitual offender.

7. There are some judgments in the above cited cases authored by this Court as well as some of the judgments of the Hon'ble superior Courts including the Hon'ble principal seat at Peshawar, wherein it has been held that the offence under section 489-F PPC provided a maximum punishment of three years and it does not fall within the prohibitory clause of section 497 (1) Cr. P.C. Accused was behind bars for more than a month. Investigation in the case was complete. Case was ready for trial and as such accused was no more required by police

for further investigation. Accused was granted bail. Even in previous cases an accused whose bail bonds have been forfeited, where there is a case of further inquiry and the accused making a case for bail on merits, mere abscondence would not come in his way while granting bail. Similar view has already been taken for the grant of bail even despite involvement of the accused/Petitioner in other cases of alike nature, particularly when there is no previous conviction, mere implication in other criminal cases will stand as hurdle in the way of releasing of the accused/Petitioner on bail. The latest view of the Hon'ble Supreme Court of Pakistan in Criminal Appeal No. 273 of 2017 has altogether formed a distinguishable view that for the offence when an accused has been charged does not attract the prohibitory clause, there can be no strong reason to withhold the concession of bail, as grant of bail in such like cases is a rule and refusal is an exception.

8. In view of the above observations which are no doubt purely tentative in nature,

the Petitioner is entitled to the concession of bail. Hence he is asked to furnish bail bonds in the sum of Rs. 700,000/- (Rupees seven 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. These are the reasons of my short order of even date.

Announced
Dt: 13.09.2017.


Mohammad Ibrahim Khan
JUDGE

Office
14/09/2017
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Petitioner:- (Muhammad Ibrahim) by Mr. Rashid Ali Khan, Advocate.

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

MOHAMMAD IBRAHIM KHAN, J:- For reasons to be recorded later on in the detailed judgment, this application for bail is allowed and accused/petitioner Muhammad Ibrahim involved in case FIR No. 562 dated 18.12.2016 charged under section 489-F PPC registered at Police Station Talash District Dir Lower is directed to be released on bail provided he furnishes bail bonds in the sum of Rs.700,000/- (Rupees seven 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.

Announced.
Dt: 13.09.2017.


Mohammad Ibrahim Khan
JUDGE

Office
13/09/17