

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
 (Judicial Department)

Cr.Misc.BA No.1485-P/2015

Date of hearing: \_\_\_\_\_

Petitioner (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**ORDER**

**ASSADULLAH KHAN CHAMMKANI, J.-** Petitioner

Haji Sardar Ali, seeks bail in case FIR No.230 dated 14.03.2015, registered under section 489-F PPC, in Police Station City Mardan.

2. Allegations against the petitioner are that in connection with a joint business he handed over a cheque No.347323203 dated 11.12.2014 to complainant Yar Muhammad in respect of an amount of Rs.50,00,000/- (fifty lacs) outstanding against him in connection with a joint business, which on presentation before Bank Alfalah Mardan road, was dishonoured to du insufficient amount in the account of the petitioner, hence, this case.

3. Arguments heard and record perused.

4. Petitioner is charged for issuance of Cheque, which has allegedly been dishonoured on presentation before the concerned Bank. Admittedly, punishment

provided for the offence under section 489-F PPC imprisonment for three years or fine or both. The gravity of the offence how high so ever may be and whatever type of transaction is involved, but in no case, the punishment may be greater than the one provided under the Statute, rather it can be lesser than the one provided in the Statute in case of leniency of the Court in light of the peculiar facts and circumstances of the case. The scheme of Section 497 Cr.P.C. is to release an accused on bail if his case does not fall within the Prohibitory Clause of S.497 Cr.P.C. as in such like cases bail is a rule and refusal thereof an exception. Above all, punishment provided for the offence under section 489-F PPC, is imprisonment for three years or fine or both and it is settled law that when two types of sentences are provided for an offence then the lesser punishment is to be considered by the Courts for the purposes of bail. In the circumstances, offence under section 489-F PPC not only does not fall within the Prohibitory limb of Section 497 Cr.P.C., but is deemed to be bailable when only the sentence of fine is taken into consideration. In case, titled, **“Riaz Jaffar Natiq Vs Muhammad Nadeem Dar and others” 2011 S C M R, 1708**, the august Apex Court by following the principles laid down in case titled, **“Zafar Iqbal Vs Muhammad**

**Anwar and others” ( 2009 SCMR 1488),** granted bail to the accused on the ground of not falling the punishment of the offence within the Prohibitory Clause of Section 497 Cr.P.C. and in that case a Cheque of rupees twenty Millions was dishonoured,

3. Deriving wisdom from the judgments of the Apex Court (Supra), I allow this petition and release the petitioner on bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

**Announced**  
**08.02.2016**

**J U D G E**













