

## JUDGMENT SHEET

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

**Cr.M.BA. No. 495-M/2017**

### **JUDGMENT**

Date of hearing: 08.11.2017

**Petitioner:- (Zia Talab) by Mr. Kaleemullah,  
Advocate.**

**Respondents:- (the State & 1 another) by Hafiz  
Bakht Amin, State counsel and Muhammad  
Raziq, Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** After being entangled in case FIR No. 29 dated 24.01.2017 charged under sections 489-F & 420 PPC registered at Levies Post Batkhela, accused/Petitioner Zia Talab is looking for his post arrest bail.

2. Prior to, the Petitioner for the similar relief approached the Court of learned Judicial Magistrate/Illaqa Qazi-III Malakand through an application, which was dismissed by the order dated 23.08.2017. Next off, the matter was taken up before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Malakand at Batkhela, where too the wheel of fortune did not

favour the Petitioner and the application stood dismissed on 31.08.2017.

3. As per prosecution version, on 18.01.2017 at 15:45 hours the complainant Shakeel Ahmad reported the matter to the local police vide *Naqal Mad (Roznamcha) No. 17* by presenting the cheque bearing No. 00045201 dated 01.08.2016 alongwith memorandum of slip and stamp paper dated 22.10.2015 that he had purchased a piece of land situated within the local limits of Mauza Piran Kalay from Raza Talab Khan son of Zoor Talab Khan in presence of marginal witnesses of the deed in lieu of sale consideration of Rs.53,62,500/-, which was paid to him in lump sum. Later on, due to differences in respect of the suit land amongst the LRs *inter-se*, the sale in question could not materialize, therefore, the complainant made a request for return of the said amount of Rs. 53,62,500/- from the accused/Petitioner. In this regard, the Petitioner had issued the above-referred cheque for an amount of Rs. 15 lacs on 01.08.2016, which was bounced back when presented before the concerned Bank due to insufficient funds in the account of Petitioner. In view whereof an inquiry

was initiated which culminated into FIR *ibid* registered against the Petitioner.

4. Having heard arguments of learned counsel for the Petitioner, learned counsel for the complainant and learned State counsel, record with their valuable assistance delved deep into.

5. Learned counsel for the Petitioner referred to 2013 P Cr. LJ 1591 (Lahore) "Dr. Nasar Khan vs the State and another", 2013 P Cr. LJ 1593 (Sindh) "Deedar vs Abdullah and another", 2014 P Cr. LJ 1327 (High Court (AJ&K) "Shahroom vs the State", 2017 P Cr. LJ Note 34 (Peshawar) "Haji Sardar Ali vs Yar Muhammad and another" and PLD 2013 Lahore 173 "Abdul Sattar vs the State and another". In the light of these dictums of the Hon'ble superior Courts prayed for the grant of bail. Inversely, learned counsel for the complainant assisted by learned State counsel placed reliance on 2009 SCMR 174 "Shameel Ahmad vs the State", 2017 MLD 1383 "Muhammad Ilyas vs the State", 2016 MLD

451 (Peshawar) "Jamal Shah vs the State and another", PLJ 2013 Cr.C. (Peshawar) 686 (D.I. Khan Bench) " Muhammad Imran vs State and another", 2011 YLR 863 (Lahore) " Abdul Sattar vs the State", 2012 P Cr. LJ 918 (Sindh)" Muhammad Naseem vs the State" and 2011 MLD 299 (Lahore) " Muhammad Nawaz vs the State & others" . Besides, the

learned counsel for complainant also placed on record photocopy of the FIR bearing No. 228 dated 29.09.2014, wherein the present accused/Petitioner has been indicted an accused under the similar section of law i.e. 489-F PPC. Thus, prayed for utter dismissal of the bail petition.

6. It appears from the record that though the accused/Petitioner has been directly charged for issuance of bogus cheque dishonestly to the complainant for an amount of Rs. 15,00,000/-, however, from the available record it divulges that he was mainly refused the concession of bail on the grounds of his long unexplained absconsion and his involvement in

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offence of alike nature by the learned Additional Sessions concerned through the impugned order. Without being prejudice to the merits of the case lest it may affect claims of each party, suffice it to say, that it has been held in plethora of judgments by the Hon'ble superior Courts that the offence under section 489-F PPC provides a maximum punishment of three years and it does not fall within the prohibitory clause of section 497 (1) Cr. P.C, whereas section 420 PPC is bailable and when an accused was behind the bars for sufficient length of time. Investigation in the case was complete, inasmuch as charge has been framed against an accused and such an accused was no more required by police for further proceedings. Then, such an 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

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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 not stand as hurdle in the way of releasing of an accused/Petitioner on bail.

7. The most recent 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. Moreover, as per version of the complainant, the cheque in question has been issued to him by the accused/Petitioner in respect of <sup>لے</sup> his outstanding amount which was allegedly paid for purchase of piece of land by the complainant, but later on the sale of suit land did not take place due to differences amongst the LRs. Thus, in view whereof, prima facie the matter appears to be civil in nature.

9. Learned counsel for the complainant and learned State counsel were put a query by the Court as to whether there are any exceptions existed in the case, in view whereof bail could be refused to the accused/Petitioner, they though argued the case at considerable length but could not pin-point any such exceptions.

10. In view of the above, the Petitioner at this juncture is entitled to the concession of bail, hence, 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.

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

12. Before parting with this judgment, it is pertinent to mention here that the observations made above are purely tentative in nature and should in no way prejudice the case of either party during trial.

Announced  
Dt: 08.11.2017.

  
**JUDGE**

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