

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

BA No. 1751-P/2015.

JUDGMENT

Date of hearing. 30.10.2015

Petitioner (Jamal Shah) By Mr. Shakirullah Afridi, Advocate.

State: By Mr. Muhammad Sohail Khan, AAG.

Complainant. By Mr. Abdul Latif Afridi Advocate.

MUHAMMAD YOUNIS THAHEEM, J. The

petitioner, Jamal Shah having failed to secure his release on bail from the Courts below have approached this Court for seeking the same relief in case FIR No. 479 registered on 14.04.2015 under section 489-F PPC at Police Station Hayatabad, Peshawar.

2. Brief facts of the case are that respondent No.2/ complainant Haji Tawab Sher reported the matter to the SHO Police Station Hayatabad in the shape of written application dated 14.04.2015 to the effect that accused/petitioner issued a cheque bearing No.1049920 dated 28.02.2015 in the sum of Rs.41, 00, 000/- in lieu

of outstanding amount against him. That upon presentation of aforesaid cheque to the concerned Bank for encashment of the said cheque, the same declared bounced due to insufficient balance in the Bank account of accused/petitioner. For above bouncing of cheque upon the said application aforementioned FIR No. 479 was registered.

3. Learned counsel for the petitioner argued that the case of petitioner is of further inquiry as allegations leveled in the FIR would be proved after recording of evidence as to whether business relations among the petitioner/accused and complainant existed and actually cheque was dishonestly issued and has been dishonoured. Secondly matter is pending adjudication before the learned Political Agent Khyber Agency and is of civil nature. Thirdly, quantum of sentence for alleged offence is three years which does not come within the ambit of prohibitory clause and the petitioner has been malafidely charged so is squarely entitled for the concession of bail.

4. On the other hand learned counsel for the private respondent No.2/complainant argued that though the offence does not come within the ambit of prohibitory clause but the case of petitioner is exceptional one as he is habitual offender, had squeezed money from different people including complainant and there are so many other cases registered against him. The other connected bail petition No.1836-P/2015 pertaining to FIR No.1026 dated 03.08.2015 with Police Station Hayatabad and similar kind of dispute pending before the learned Court of Political Agent Khyber Agency is the proof of his being habitual offender and has repeated the offence. so the case of petitioner comes within the exception as envisaged in the famous Tariq Bashir's case cited as **"PLD 1995 Supreme Court 34"** wherein the Honourable Supreme Court has discussed and distinguished the exceptions. Secondly, there is every likelihood of his abscondence and fleeing away from Pakistan as his son Sajid Ali is already absconding after defrauding and cheating so many people and fetching

away huge amount of money from complainant who is accused in criminal case registered vide FIR No. 1026 dated 03.08.2015 for offence u/s 489-F PPC. Complainant apprehends that petitioner is planning to leave the country after seeking bail so is not entitled for the grant of discretionary relief of this Court as well.

5. I have heard both the learned counsel and learned AAG supported the learned private counsel for complainant, considered their raised contentions and perused the record of the instant case and the record of connected bail petition No.1836-P/2015.

6. From the perusal of record and considering arguments it reveals that against the present petitioner/accused two FIRs had been lodged one by the complainant/respondent No.2 and other by Baghi Sher about same BA No.1836-P/2015 relating to FIR No.1026 is also pending adjudication today before this Court for relief of bail for the offence of same nature.

7. Admittedly, the offence under section 489-F PPC does not come under the ambit of prohibitory

clause but the offence for which the accused has been charged is non-bailable offence and the grant of bail in offences for which punishment is less than ten years is rule and rejection thereof is an exception to that rule as laid down by the Honourable Supreme Court in above referred Tariq Bashir's case but the instant case has its own peculiar and exceptional circumstances as accused/petitioner had issued cheque No.3917836 in the sum of Rs.11495000/- Muslim Commercial Bank Regi Lalma which has also been dishonoured for the same offence another FIR No. 1026 dated 03.08.2015 has been registered against the petitioner and the learned Courts below had rejected the bail petition in the same referred criminal case.

8. From the arguments of both the learned counsel it reveals that there is pending another case for the realization of some huge amount before the learned Court of Political Agent Khyber Agency and against the same proceeding writ petition has admittedly been filed before this august Court but none among the parties

provided the certified copies of the same proceedings either pending before the above said learned Political Agent or before this august Court. So from the available record accused/petitioner tentatively seems to be habitual money squeezer as per allegations, had fetched huge amount of money from complainant and has repeated the offence so is connected with the commission of the offence, hence, his case comes within the exceptions as discussed in the above cited Tariq Bashir's case despite the fact that offence does not come under the prohibitory clause.

9. So upon the touchstone of above principle enunciated by the Honourable Supreme Court of Pakistan in Tariq Bashir's case as discussed above, the accused/petitioner is not entitled for the concession of bail and the learned two Courts below had rightly exercised their discretion by refusing relief of bail, hence this petition is rejected. Reliance is placed on the judgment of Honourable Supreme Court in case titled

“Shameel Ahmad Vs The State” reported as **2009 SCMR 174”**.

10. However, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided on its own merit after trial within six months.

Announced:
30.10.2015.

J U D G E

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