

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT.

JUDGMENT

Cr.MBA No.2177-P/2022.

Date of hearing 28.07.2022.

Farman Hussain Vs The State.

petitioner (s) by: Mr. Khalid Hamid
Advocate.

State by: Mr. Muhammad Furqan
Advocate.

Complainant by: Mr. Muhammad Irfan
Khattak Advocate.

MOHAMMAD IBRAHIM KHAN, J:-.

After being enmeshed in case FIR No.163 dated 03.03.2022, registered under Sections 489-F/420 PPC, at Police Station MRS, Kohat, petitioner Farman Hussain is looking for his post arrest bail.

2. As per contents of FIR registered on the basis of acceptance of application filed under Section 22-A Cr.PC, by complainant Hamid Jamil Khan, Principal Garrison Cadet College, Kohat, vide order of learned Justice

of Peace/ Addl: Sessions Judge-VII, Kohat, a Departmental inquiry was conducted against petitioner, then serving as Director, Finance, Garrison Cadet College, Kohat, on account of his involvement in illegal and immoral activities. At conclusion of inquiry, petitioner was found guilty of committing misappropriation, cheating, fraud and embezzlement in the bank account of amount of Rs. 37,538,329/-, who was dismissed from service. On assurance and commitment of petitioner qua return of said amount, he handed over different cheques to the complainant for encashing the same, out of which first cheque bearing No.1749529175 of Rs.50,00,000/- dated 30.09.2021, on presentation before Muslim Commercial Bank, Bannu road, was dishonored due to insufficient funds. The complainant approached the local police as well as the DPO, Kohat for registration of the case against petitioner but no heed was paid to him, therefore, he filed application

under Section 22-A Cr.PC before the Justice of Peace, Kohat; which was allowed vide order dated 23.02.2022, thereby directing the SHO concerned to register the FIR against petitioner. On the basis of which, present case was registered.

3. I have heard learned counsel for the parties and gone through the record.

4. Learned counsel for petitioner besides the quantum of sentence at the most would extend to three years or with fine or with both, has relied upon the judgments of the Hon'ble Supreme Court of Pakistan and this Court, reported in cases of **“Abdul Saboor Vs The State through A.G. KPK and another” (2022 SCMR 592) and “Muhammad Ishaq Vs The State and another” (2018 YLR Note 140 Peshawar)** respectively and prayed for grant of bail to the petitioner.

5. Inversely, learned AAG appearing on behalf of the State assisted by learned counsel for complainant, opposed

the bail on the ground of personal assurance of the petitioner by filing an affidavit before the competent authority/ complainant, that as he has committed the offence falling within the meaning of Section 489-F PPC (dishonestly issuing a cheque) besides 408 PPC (criminal breach of trust by clerk or servant), is liable for the return of amount and has furnished series of cheques.

6. This Court is well aware of dishonoring of the cheques which even if become part of prosecution evidence and bring home the charges would entail punishment to the maximum 3 years or with fine or with both but it is also to be taken into consideration that when there is an exception for refusal of bail even for the offence where grant of bail is a rule, bail may be and can be refused. Moreover, the apex Court has repeatedly held that the mere fact that an offence does not fall within the prohibitory clause of section 497(1) Cr.PC, would not mean that such an offence had

become a bailable offence. The discretion still remains with the competent Court to consider whether a person accused of such an offence does or does not deserve the grant of bail in accordance with the established norms governing the exercise of such a power. **“Afzaal Ahmed vs The State” (2003 SCMR 573), “ Muhammad Afzal vs The State” (1997 SCMR 278) & “Imtiaz Ahmed vs The State” (PLD 1997 SC 545).** It is not a rule of universal application. Each case has to be seen through its own fact and circumstances and the concession of grant of bail cannot be exercised in a way which can be termed as arbitrary, fanciful or perverse. No malafide or ulterior motive has been attributed on the part of complainant to falsely implicate the petitioner in the case. Before his dismissal from service, petitioner was serving as Director, Finance, Garrison Cadet College, Kohat, who has robbed the said college by committing criminal breach of trust. He was

entrusted with the fees of the students and other finances, which were earned by their parents through hard means. He was having complete dominion over the said money. Tentatively by filing his affidavit and executing an agreement with the college administration of his own sweet will, provided cheques of different nominations for its payment on different dates, the very first cheque being dishonoured due to insufficient fund, which are in detail mentioned in the agreement deed dated 12.09.2020, would certainly be a big blow to his enlargement on bail which will serve as an exception and would lean the Court to dismiss this bail application.

7. In view of above, this bail petition is dismissed, however, the petitioner is facilitated for an early outcome of the trial of this case by filing challan before the competent Court where the trial be held expeditiously. It is too left entirely to the Investigation Officer of this case/ District

Public Prosecutor concerned to levy Section 408 PPC, as an added section in the First Information Report followed by submission of the challan under the same section of law and also to the learned Court vested with the trial to charge the accused (Farman Hussain) accordingly while framing of the charge.

Announced.
28.07.2022.

J U D G E