

## JUDGMENT SHEET

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

**Cr.M.BA. No. 6-M/2018**

### **JUDGMENT**

Date of hearing: 02.02.2018

**Petitioner:- (Muhammad Shoaib) by Mr.  
Asghar Ali, Advocate.**


**Respondents:- (the State & 1 another) by Mr.  
Rahim Shah, Asst: Advocate General and Mr.  
Attaullah Khan Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** After being enmeshed in case FIR No. 58 dated 21.02.2017 charged under section 489-F PPC registered at Levies Post Batkhela, accused/Petitioner Muhammad Shoaib is looking for his post arrest bail.

2. Prior to, the Petitioner for the similar relief approached the Court of learned Additional Assistant Commissioner Batkhela through an application, which was dismissed by the order dated 19.10.2017. 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 him and the application stood dismissed on 31.10.2017.


3. As per prosecution version, the complainant Naveed Iqbal on 20.02.2017 at 15:55 hours reported the matter to the levies officials by producing photocopies of cheque No. 33816434 dated 31.07.2016 for an amount of Rs. 4,70,000/- and cheque No. 33816435 dated 28.08.2016 for an amount of Rs. 900,000/- that he (complainant) and accused/Petitioner Muhammad Shoaib had joint property business. In lieu of his outstanding amount of Rs. 42 lacs, the accused/Petitioner had issued him the above-referred two cheques, which on presentation before the concerned Bank were bounced back due to insufficient funds in the account. 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 Astt: Advocate General for the State, record with their valuable assistance delved deep into.

5. Learned counsel for the Petitioner referred to PLD 2017 Supreme Court 733 "Muhammad Tanveer V/S The State and another, 2011 SCMR 1708 " Riaz, Jafar Natiq V/S Muhammad Nadeem Dar and others", unreported judgments of this Court rendered in Cr.M B.A. No. 199-M of 2017 decided on 24.5.2017 titled as " Inamullah V/S The State & 1 another", Cr. M B.A. No.93-M of 2017 decided on 24.03.2017 titled as " Majidullah V/S The State & 1 another", 2014 P Cr.LJ 1060 (Peshawar) " Muhammad Iqbal Khan V/S The State and another" and 2017 P Cr.LJ Note 34 (Peshawar) "Haji Sardar Ali V/S Yar Muhammad 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 Astt:

Advocate General for the State placed reliance on 2016 MLD 1450 (Peshawar) " Imran Khan Orakzai V/S The State and another", 2013 P Cr.LJ 1022 (Lahore) "Sardar Muhammad Mughal V/S The State and another", 2009

SCMR 174 “ Shameel Ahmad V/S The State”,  
2009 SCMR 1488 “Zafar Iqbal V/S  
Muhammad Anwar and others”, 2012 YLR  
674 (Sindh) “ Naveed Maqsood V/S The State  
and 2012 MLD 799 (Peshawar) “ Wajid Aman  
V/S The State and another” thereby 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 cheques dishonestly to the complainant for huge amount of Rs. 4,70,000/- and Rs.900,000 respectively, however, from the available record it divulges that he was mainly refused the concession of bail on the ground of his previous involvement in alike nature of offences. 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, 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. 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 not stand as hurdle in the way of releasing of an accused/Petitioner on bail. In context of the present case, though the prosecution placed on record copies of certain FIRs which were registered against accused/Petitioner Muhammad Shoaib but the record is silent as to whether the accused/Petitioner has been convicted and sentenced in the above-referred cases or otherwise.

7. The most recent view of the Hon'ble Supreme Court of Pakistan in Criminal Appeal No. 273 of 2017 has altogether formed a distinct 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.

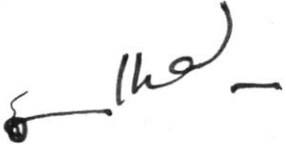
8. Moreover, as per version of the complainant, these cheques have been issued to him by the accused/Petitioner in respect of his outstanding amount and in between the parties there existed a joint property business. Thus, in view whereof, prima facie the matter appears to be civil in nature.

9. Learned counsel for the complainant and learned Astt: Advocate General 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 exception.

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. 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: 02.02.2018

  
**JUDGE**

File  
07/02/18  
w/R