

Judgment Sheet

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA),
SWAT.

JUDICIAL DEPARTMENT

Cr.M No.299-M/2017.

JUDGMENT

Date of hearing...12/07/2017.....

*Petitioners (Zar Nasib Khan & Israr Uddin) By Mr.M.Saeed Khan Shangla,
Advocate.....*

State by Barrister Asad Hamidur Rehman.....

Respondent By Mr.Muhammad Ikram Khan.....

MUHAMMAD NASIR MAHFOOZ, J:- Having

failed to obtain their release on bail from the courts below, petitioners Zar Nasib Khan and Israr Uddin have filed the instant petition seeking bail in case FIR No.370 dated 18.04.2017 under section 489-F PPC registered at police station Chitral.

2. According to the contents of FIR, petitioners are charged for issuance of two cheques to the complainant/respondent, which on presentation to the concerned Bank, were dishonoured for insufficient amount.

3. Learned counsel for the petitioners besides his submissions relating to the subject matter of the instant FIR has also placed on file copies of two orders passed

by the Hon'ble Peshawar High Court, Peshawar in W.P.No.441-P/2016 and W.P.No.442-P/2016 wherein the Hon'ble Court has restrained the NAB authorities from arresting the petitioners till conclusion of trial. He stated that there is six months delay in lodging of FIR and authority letter was issued by the complainant for the works to be carried on in constituency of NA.33 and 34. He contended that liability lies on three different persons out of whom two are petitioners before this court and one Ajmal Khan is absconder and being a joint business between the petitioners and complainant it is a nature of civil dispute. He further submitted that on 14.04.2017 the I.O has also given opinion in favour of the petitioners. He further contended that the petitioners are not habitual offenders and the case against them is one of further inquiry and the offence with which the petitioners are charged does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, they are entitled to the concession of bail. He placed reliance on **2000 P.Cr.L.J. 814, 2009 P.Cr.L.J. 325, 2011 SCMR 1708, 2013 P.Cr.L.J. 1756, 2015 P.Cr.L.J. 129 and 2016 YLR 202.**

4. Conversely, learned counsel for the complainant strongly resisted the grant of bail to the

accused-petitioners and submitted that petitioners are directly charged in the FIR and has caused financial loss to him. He also referred to section 489-F PPC that if on the one hand the case does not fall within the prohibitory clause of Section 497 Cr.P.C then the latter part of the said section provides that the burden of proof shall rest on the accused to the effect that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque, therefore, the petitioner could not be absolved of the liability. He also submitted that release of the petitioner in the NAB case has got no nexus with this case and placed reliance on **2002 SCMR 1997 and 2017 YLR 694**, hence, requests for dismissal of the instant bail petition. The learned State counsel assist the court and referred to **2009 SCMR 174**.

I have heard the arguments of learned counsel for the parties and gone through the available record.

5. Notwithstanding the fact that punishment provided for offence under section 489-F PPC may extended to 3 years or with fine or both but in the present case the parties have executed an agreement deed on 12.08.2015 arising out of the subject matter of

dispute of the present FIR, copies of the said agreement have been perused wherein although present petitioner No.1 has accepted certain liabilities for payment of certain amount towards satisfaction of the claim of complainant/respondent and thereafter he failed to fulfill that responsibility. Without dilating upon the merits of the case lest it may prejudice proceedings before the learned courts below, it would be sufficient to hold that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C for dishonestly issuing the cheques and it is yet to be seen that the accused-petitioners had any intention to cheat or defraud the complainant/respondent. Record reveals that challan has been submitted in the court and the accused/petitioners are no more required for further inquiry. Moreover, the contentions raised in the FIR makes it a case of further inquiry as they are already facing prosecution by NAB Authorities. The judgments cited by the learned counsel for the complainant have got distinguishing features as in some cases bail was refused being a habitual offender and in other cases the accused had made voluntary confession. Moreover, there is no likelihood of absconsion or apprehension of

tempering with the prosecution evidence as the petitioners are stated to be men of means.

Thus, for the reasons discussed above, this petition is allowed and consequently the petitioners are directed to be released on bail provided they furnish bail bonds in the sum of Rs.1,000,000/- (one million) each with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

Above are the reasons for my earlier short order of even date.

Announced.
Dt.12/07/2017.

J U D G E