

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr: Misc: BA No. 337-B / 2023

Taj Ali Khan.
Versus
The State etc:


JUDGMENT

Date of hearing **06.07.2023.**

For **petitioner:** Mr.Muhammad Waqar
Alam, advocate.

For the **State:** Mr.Umer Qayum Khan,
Asstt: A.G.

For **respondent:** Messrs. Wasiullah Khan
Khattak and Haji Malak
Rahman Khattak,advocates.

 **FAZAL SUBHAN, J.---** Instant is a bail application of petitioner Taj Ali Khan s/o Mughal Khan r/o Darwiah Khel Banda Daud Shah, Tehsil and District Karak, who is seeking his post-arrest bail in connection with case F.I.R No.290 dated 30.05.2023 u/s 489-F P.P.C, Police Station, Karak city, District Karak.

2. On the application of complainant, Arab Gul advocate, an inquiry into the issuance of two cheques were conducted by the local police of

Police Station, Karak city and after getting legal opinion from District Public Prosecutor concerned, case in hand was registered. It was contention of the complainant that he has friendly relationship with the petitioner Taj Ali Khan, a contractor by profession and at the need he used to extend financial help to him and in this way an amount of Rs.25,00,000/- (Twenty five lacs) was out-standing against him. On his demand, the petitioner Taj Ali Khan handed over two cheques valuing Rs.900,000/- (nine Lacs) and another of Rs.11,80,000/- (eleven lacs and eighty thousand) which were presented in the bank for encashment but these were returned by the Manager on the plea that Taj Ali Khan has refused to encash the said cheques. Accordingly on the report of complainant, case in hand was registered.

3. After arrest, the petitioner applied for bail in the court of Judicial Magistrate-IV, Karak, and then in the court of learned Additional Sessions Judge-I, Karak, but his bail applications were dismissed, hence, he filed the instant bail petition.

4. Arguments of learned counsel for petitioner and learned counsels for complainant assisted by the learned AAG heard and record gone through.

5. After hearing arguments of both the learned counsel for the parties and without dilating upon deep merits of the case, it is clear that offence u/s 489-F P.P.C, provides maximum punishment for three years and, therefore, it does not fall within the prohibitory limb of section 497(i) Cr.P.C, and in such like offences grant of bail is a rule and refusal an exception. This principle is discussed and elaborated by the superior Courts in plethora of judgments. In the case of ***"Jehanzeb Khan V. The State through Additional Advocate General Khyber Pakhtunkhwa"*** reported in ***2020 SCMR 1268*** and ***"Tariq Bashir and 05 others V. The State"*** (PLD 1995 SC 34), the august Court has held that ***"bail in cases not falling within the prohibitory clause will be declined/refused only in extraordinary and exceptional circumstances"***. In another case titled ***"Muhammad Tanveer Vs The State and another"*** (PLD 2017 SC 733), the august Court held that:-

"6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

In the case of **"Rao Ghulam Mustafa V.**

The State and another" (2023 P.Cr.L.J 499), in

identical matter, it has been held:-

"6. The maximum punishment of offence provided under section 489-F, P.P.C. is not more than imprisonment for three years or fine or both, as such, the same is not covered by the prohibition contained in subsection (1) of section 497, Cr.P.C. In view of the dictum laid down in *Tariq Bashir and 5 others v. The State* - PLD 1995 SC 34, in non-bailable offences falling in the second category i.e. punishable with imprisonment for less than ten years, the grant of bail is a rule and refusal an exception. No exceptional circumstances could be pointed out by the learned prosecutor as well as the learned

counsel for the complainant, as enumerated in Tariq Bashir supra. Further wisdom can be extracted from the cases titled Muhammad Tanveer v. The State - PLD 2017 Supreme Court 733 and Abdul Saboor v. The State through A.G. Khyber Pakhtunkhwa and another - 2022 SCMR 592. "

6. For all the above reasons, there is no doubt that offence u/s 489-F P.P.C, is not covered by the prohibitory clause of Section 497(1) Cr.P.C, and in ordinary circumstances, bail is granted to the accused who has allegedly given a cheque for encashment but has been dishonored either due to insufficient amount or any other reason.

7. It has been argued by the learned counsel for petitioner that the petitioner is a contractor and the amount was advanced as a share in the business and this process continued for the last more than a decade and the cheques were issued in respect of the business transaction, hence, the necessary ingredient of handing-over the cheques dishonestly is not attracted to the case of petitioner because the same were neither dishonestly given nor there was intention to knowingly defraud the complainant, thus, in this situation the cheques were only guaranty cheques.

In this view of the matter, it is yet to be established during trial as to whether parties had any business transaction as well as the nature of the cheques advanced to the complainant and this fact also makes the case of petitioner one of further inquiry into his guilt.

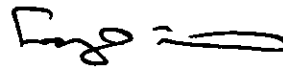
8. For the above mentioned reasons, the instant petition is allowed and the accused/petitioner is admitted to bail in the instant case subject to furnishing bail bonds of Rs.10,00,000/- (ten lacs) with two sureties each in the like amount, to the satisfaction of the learned Illaqa Judicial Magistrate/MOD, concerned. The sureties must be local, reliable and men of means.

9. These are the detailed reasons of the short order of the even date.

Announced.


06.07.2023.

Imranullah PS


JUDGE

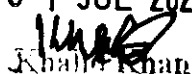
(S.B)

Hon'ble Mr. Justice Fazal Subhan


31/7/2023

SCANNED

31 JUL 2023


Khaliq Khan