

45/24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhail
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

DJ-AFR

Crl.P.L.A No.240/2024

[Against the order dated 29.02.2024 passed by the Islamabad High Court,
Islamabad in Criminal Miscellaneous No. 277-B of 2024)

Ali Anwar Paracha

...Petitioner(s)

Versus

The State & another

...Respondent(s)

For the Petitioner(s) : Mr. Khurram Masood Kiani, ASC
Sh. Mehmood Ahmed, AOR

For the State : Mr. Fauzi Zafar, ASC
as state counsel

For the Complainant : Raja Rizwan Abbasi, ASC.
Syed Rifaqat Hussain Shah, AOR

Date of Hearing : 04.06.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through the present petition, the petitioner seeks leave to appeal against the order of Islamabad High Court, Islamabad, dated 29.02.2024, (**Impugned Order**) whereby the post-arrest bail has been declined to him in FIR No.751 dated 05.10.2023 registered under Section 489-F PPC at the Police Station Lohi Bher.

2. Brief facts as disclosed in FIR are that complainant gave Rs. 70 million to the petitioner with approximately Rs. 31.79 million paid through bank transactions and the balance paid in cash in the presence of witnesses named in the FIR. In lieu of this business liability the petitioner/accused handed over a cheque

bearing No. D-02277122 valuing Rs. 5,00,00,000/-(Rupees five crore only) to the complainant. The said cheque when presented in the concerned bank was dishonoured.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case with mala fide intention and ulterior motives; that prior to this FIR, complainant moved a false and frivolous application before PS Margalla and got registered a fake FIR No. 692 of 2023 dated 19.10.2023 registered under section 506(ii), 342, 148, 149 PPC, which was later on cancelled and the this matter is one of the further inquiry.

4. The learned law officer assisted by the learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the petitioner. They contend that the petitioner attempted to deprive the complainant of a huge amount and issued a cheque dishonestly which was dishonoured by the concerned bank; that four other FIRs under section 489-F PPC are also registered against the petitioner and lastly pray for dismissal of the instant petition.

5. We have heard the learned counsel for the parties and perused the material available on the record.

6. Perusal of the record indicates that the complainant has failed to provide specific details about the alleged business transaction with the petitioner. Additionally, the complainant has been unable to provide any receipt for the cash amount allegedly received by the petitioner. This court has held in a number of cases that the foundational elements to constitute an offence under Section 489-F are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or

fulfillment of an obligation, and lastly that the cheque is dishonoured.

7. In this view of the matter, the question whether the cheque was issued towards fulfilment of an obligation within the meaning of section 489-F P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The petitioner is behind the bars since his arrest. The maximum punishment provided under the statute for the offence under section 489- F, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. Reference may be made to the case of *Tariq Bashir v. The State* (PLD 1995 SC 34) wherein it was held as under:-

“It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases..”

8. As far as the argument of the learned counsel for the complainant that other cases of similar nature have been registered against the petitioner is concerned, mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case. Reliance is placed on *Moundar and others v. The State* (PLD 1990 SC 934), *Muhammad Rafiq v. State* (1997 SCMR 412), *Syeda Sumera Andaleeb v. The State* (2021 SCMR 1227) and *Nazir Ahmed alias Bhaga v. The State* (2022 SCMR 1467).

9. Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of section 497(2), Cr.P.C. entitling for further inquiry into his guilt.

10. For the above reasons, this petition is converted into an appeal and allowed. The impugned order of the High Court dated 29.02.2024 is set aside. The petitioner is admitted to post-arrest bail subject to his furnishing surety bonds in the sum of Rs. 100,000/- and the PR in the like amount to the satisfaction of the Trial Court.

11. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

12. Above are the reasons of our short order of even date.

Judge

Judge

Judge

Islamabad,

4th June, 2024

~~NOT~~ APPROVED FOR REPORTING

Paras Zafar*