

Criminal Misc. No. 490-B/2013

Sajjad Akhtar Kiani

The State, etc.

21.05.2013 Mr. Tariq Mahmood Musa, Advocate for the petitioner.
Ch. Muhammad Yousaf, DDPP for the State with Sikandar, SI with record.
Malik Waheed Anjum, Advocate for the complainant.

Through this petition, Sajjad Akhtar Kiani petitioner seeks post-arrest bail in case FIR No. 726 registered at Police Airport, District Rawalpindi on 18.9.2012 for an offence under section 489-F, PPC.

2. The brief facts narrated in the FIR are that father of the complainant, namely, Muhammad Khurshid Kiani left huge property, whereafter her brother Sajjad Akhtar Kiani decided to give her share from the said property in the form of money, which she accepted, therefore, a cheque bearing No. CA-0014921214 dated 3.7.2012 amounting to Rs. 430,00,000/- drawn at Faisal Bank, Sadiq Abad Road,

Satellite Town, Rawalpindi was issued by the petitioner but when presented dishonoured thrice, i.e. on 4.9.2012, 7.9.2012 & 10.9.2012 due to insufficient funds. Hence, the FIR.

3. The learned counsel for the petitioner submits that complainant filed a civil suit for permanent injunction, etc. on 2.1.2009, which was dismissed as withdrawn on 5.1.2009 on the basis of a compromised with Parveen Begum, the mother of the complainant; a Jirga was convened, wherein a blank cheque was issued to the petitioner through their uncle Rashid Kiani; that the police during the investigation has found the petitioner innocent; that the Challan has been submitted on 4.9.2013 and the petitioner is no more required for the purpose of investigation and prays for bail.

4. Conversely, the learned counsel for the complainant submits that in the first investigation, the petitioner was found guilty; that on 8.11.2005 the complainant was taken by the mother and brother to District Courts, Rawalpindi where a false deed was

prepared, a part of the property had been sold out and the part payment has also been received by the mother, for which the complainant is entitled to her share; FIR No. 291/2012 dated 27.12.2012 was registered at Police Station Morgah by her mother against the husband of the complainant; that they have deprived the complainant from her entire share; that there was no business deal between the petitioner and the complainant, for which the cheque could have been issued as a guarantee and prays for dismissal of the bail petition.

5. The learned DDPP adopts the submissions of the learned counsel for the complainant and submits that as a Challan has been submitted, therefore, bail may not be granted.

6. I have heard the learned counsel for the parties and perused the available record.

7. The prosecution case is that the cheque was issued by the petitioner to the complainant with dishonest intention on the pretext that the stated amount was in lieu of the share in the property left by the deceased, namely, Muhammad Khurshid Kiani, father of

the petitioner and the complainant. The recovery of inheritance share is within the domain of the civil court, where the complainant may ultimately approach, besides initiation of recovery proceedings under Order 37, CPC. The ingredients of dishonest intention to issue cheque towards repayment of loan or fulfilment of an obligation are not apparent on the face of the record. The cheque appears to have been issued by way of security rather than for discharge of any liability. The investigating officer vide *Zimni* No. 26 dated 8.4.2013 has prepared a report in favour of the petitioner, which has been approved by the higher police official. The true import of section 489-F, PPC will be seen by the trial court after recording evidence. The petitioner was arrested on 11.12.2012 and the charge having been framed on 20.9.2012, no prosecution witness was recorded upto now. The case falls within the non-prohibitory clause and the concession of granting bail must favourably be considered and should only be declined in exceptional circumstances. Huge amount is not one of such circumstances. I place my reliance upon the cases of Zafar Iqbal v. Muhammad Anwar and others [2009 SCMR

1488], Riaz Jafar Natiq v. Muhammad Nadeem Dar and others [2011 SCMR 1708] and Mian Allah Ditta v. The State and others [2013 SCMR 51].

8. For what has been stated above, I am inclined to grant bail to the petitioner. This petition is, therefore, accepted and the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs. 100,00,000/- (Rupees ten millions only) with two sureties each of the like amount to the satisfaction of trial court.

(Ali Baqar Najafi)
Judge

Approved for reporting

Judge

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