

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Crl.P.L.A No.619-L of 2024

[Against the order dated 04.03.2024 passed by Lahore High Court, Lahore in Crl. Misc.
No. 4681-B of 2024)

Azhar Pervaiz Bukhari

...Petitioner(s)

Versus

The State & another

...Respondent(s)

For the Petitioner(s) : Mr. Amjad Farouk Bismil Rajput, ASC
alongwith Petitioner

For the State : Mr. Khurram Khan, Additional
Prosecutor General Punjab

Date of Hearing : 01.07.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through the present petition, the petitioner seeks leave to appeal against the order dated 04.03.2024 (**Impugned Order**) passed by Lahore High Court, Lahore (**High Court**) in Crl.Misc. No.4681-B/2024 whereby the pre-arrest bail was declined to him in case FIR No.432 dated 23.12.2023 registered under Section 489-F PPC at the Police Station City Lala Musa District Gujrat.

2. Precisely, the allegation against the petitioner is that he issued a cheque bearing No. 00005352 amounting to Rs. 80,00,000/- to the complainant which on presentation before the concerned bank was dishonoured. An inquiry conducted to ascertain the truth also revealed that petitioner had issued the cheque.

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 photo of a blank cheque was sent to the petitioner through WhatsApp number of the complainant for demanding the amount and on refusal it was later filled in; that the cheque in question was stolen from the possession of the petitioner and an FIR thereof was also registered in 2022; that the matter is one of further inquiry.

4. The learned law Officer appearing on behalf of the state has vehemently opposed the contentions raised by the learned counsel for the petitioner. He contends that the petitioner attempted to deprive the complainant of a huge amount by issuing a cheque dishonestly which was dishonoured; that petitioner himself issued the cheque in lieu of liability in front of the witnesses; that FIR for theft of the cheque that was registered in 2022 was found to be false during investigation, therefore, criminal liability of the petitioner is apparent on the face of record.

5. We have heard the learned counsel for the petitioner and the learned law officer and perused the material available on the record with their able assistance.

6. Perusal of the record indicates that petitioner is specifically nominated in the FIR and he has not denied his signatures on the cheque. Inquiry was also conducted in this regard however petitioner failed to establish any *mala fide* of the complainant to falsely implicate him in the matter.

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 is to be determined by the learned Trial Court after recording of evidence.

8. Bail before arrest is an extraordinary relief which cannot be granted unless person seeking it satisfies conditions specified under section 497(2) Cr.P.C. and establishes existence of reasonable grounds leading to believe that there are in fact sufficient grounds warranting further inquiry. This court has discussed this aspect of case in a number of cases, reference may be made to the case of Muhammad Sadiq and others v. The State (2015 SCMR 1394), relevant portion wherefrom is reproduced as under:-

“Considerations for pre-arrest bail are totally different from that of post-arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post arrest bail is an ordinary relief. While seeking pre-arrest bail it is duty of accused to establish and prove malafide on the part of the Investigating Agency or the complainant. Bail before arrest is meant to protect innocent citizens who have been involved in heinous offences with malafide and ulterior motive.”

9. It is a settled principle of law that relief of pre-arrest bail can only be granted to the accused if he establishes the *mala fide* on the part of complainant or the police. Reference may be made to the case of Gulshan Ali Solangi and others versus The State (2020 SCMR 249) wherein it has been held that:-

“Grant of pre-arrest bail is a remedy rooted into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honour. It cannot be granted in every run of the mill criminal case, particularly to the accused confronting prima facie charges structured upon material/evidence, warranting custody, that too, on the basis of positions/pleas, verification whereof, is consequent upon recording of evidence. Being in line with the law declared by this Court, view taken by the High Court, does not calls for interference. Petitions fail, leave refused.

10. Perusal of the material available on the record indicates that petitioner has failed to establish any *mala fide* or ulterior motives on the part of the complainant. The plea taken by the learned counsel for the petitioner that cheque in question was stolen and an FIR thereof was registered by petitioner’s brother in

law holds no merit because said FIR was found to be false after investigation. Thus, there is sufficient incriminating material available on record which *prima facie* connects the petitioner with the alleged offence, thereby, disentitling him from the extraordinary relief of pre-arrest bail.

11. In view of the above facts and circumstances, the impugned judgment, having considered all aspects of the case, both legal and factual, is well-reasoned and does not warrant any interference by this Court.

12. Even otherwise, this petition is barred by 35 days. The application seeking condonation of delay (**Crl.M.A.No.97-L of 2024**) does not disclose any cogent reason for the said delay. Therefore, application for condonation of delay is hereby dismissed.

13. Consequently, this petition is hereby dismissed on the ground of limitation as well as on merits and leave is refused.

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 these observations.

Judge

Judge

Judge

Islamabad,
1st July, 2024
APPROVED FOR REPORTING
Paras Zafar*