

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL PETITION NO. 1384 OF 2021

(On appeal against the order dated 25.10.2021 passed by the Peshawar High Court, Peshawar in Cr.MBA No. 3012-P/2021)

Abdul Saboor

...Petitioner(s)

VERSUS

The State through A.G. KPK and another

...Respondent(s)

For the Petitioner(s): Ch. Riasat Ali Gondal, ASC

For the Respondent(s): Mr. Abdul Fayyaz Khan, ASC

For the State: Mr. Zahid Yousaf Qureshi, Addl. A.G.
Mr. Ziaullah, I.O

Date of Hearing: 25.01.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 25.10.2021 passed by the learned Single Judge of the Peshawar High Court, Peshawar, with a prayer to grant post-arrest bail in case registered vide FIR No. 678 dated 19.08.2020 under Section 489-F PPC at Police Station University Town, Peshawar, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that to settle some business related transactions, he issued a cheque amounting to Rs.1,00,000,00/- to the complainant, which was dishonored when presented to the Bank.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that

the cheque in question was given as a security, which was dishonestly presented to the Bank. Contends that the dispute regarding payments is a business dispute between the parties, which involves a factual controversy and the same is to be determined during trial proceedings. Contends that the petitioner is behind the bars for the last six and half months and his further incarceration would not serve any purpose to the prosecution. Contends that maximum punishment provided under the statute for the offence under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. and grant of bail in such like cases is a rule and refusal is an exception.

4. *On the other hand, learned Law Officer assisted by learned counsel for the complainant defended the impugned order whereby post-arrest bail was declined to the petitioner. They contended that the petitioner did not deny the signatures on the cheque and he has deprived the complainant of a huge amount, therefore, he does not deserve any leniency by this Court.*

5. *We have heard learned counsel for the parties at some length and have perused the available record with their assistance.*

As per the contents of the crime report, the petitioner was running a business of poultry; he borrowed some amount from the complainant and to settle the same, he issued the cheque in question to the complainant, which has been dishonored. It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under Section 489-F PPC is three years and the offence 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. This Court in Muhammad Tanveer Vs. The State and another (PLD 2017 S.C 733) has held that "once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts

throughout the country including the Special Tribunals and Special Courts." Prima facie Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under Section 489-F PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. At this stage, only a tentative assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception. By following the aforesaid principle and 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.

6. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 25.10.2021. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.10,00,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
25th of January, 2022
Approved For Reporting
Khurram