

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. 1255 OF 2021

(On appeal against the order 22.10.2021 passed by the Lahore High Court, Lahore in CrI. Misc. No. 40770-B/2021)

Muhammad Kashif Iqbal

... Petitioner

Versus

The State and another

...Respondent(s)

For the Petitioner: Mian Ismat Ullah, ASC a/w petitioner

For the State: Mirza Muhammad Usman, DPG
Mr. Tausif, DSP
Mr. Zubair, ASI

For Respondent (2): Mr. Munawar Iqbal Duggal, ASC

Date of Hearing: 12.01.2022

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 22.10.2021 passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 868 dated 26.05.2021 under Sections 420/468/471 PPC at Police Station Madina Town, District Faisalabad, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story is that the complainant and the petitioner had a joint bank account. The allegation against the petitioner is that he dishonestly made forged signatures of the complainant on a cheque and issued the said cheque to his co-accused, which was presented to bank but it was declined due to insufficient funds and thus committed cheating and fraud.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in the

present case against the actual facts and circumstances due to mala fides of the complainant in connivance with local police. Contends that the petitioner neither handed over the disputed cheque to the co-accused nor he was a beneficiary of the same. Contends that it was the complainant who himself issued the cheque to the co-accused against some transactions as the cheque book was in his own custody. Contends that no forensic test has been conducted to ascertain the authenticity of disputed signatures of the complainant. Lastly contends that the co-accused of the petitioner has been granted post-arrest bail by the learned Magistrate, therefore, following the rule of consistency the petitioner also deserves to be granted the concession of bail.

4. On the other hand, learned Law Officer assisted by the learned counsel for the complainant contended that the petitioner is specifically nominated in the crime report with a specific role of committing fraud and cheating. They submitted that the extraordinary concession of pre-arrest bail is meant for innocent persons but as there are no such circumstances available in this case, therefore, the same relief may not be granted to the petitioner.

5. We have heard learned counsel for the parties at some length and have perused the evidence available on the record.

As per the contents of the crime report, the petitioner and the complainant were maintaining a joint bank account. The allegation against the petitioner is that he made forged signatures of the complainant on a cheque and issued the said cheque to his co-accused. When the cheque was presented to the bank, it returned the same due to insufficient funds and mismatch of the signatures of the complainant. It is the case of the petitioner that the cheque book was in the custody of the complainant; ten cheques from the same cheque book have already been encashed at the behest of the complainant and the petitioner never issued the disputed cheque. On our specific query, we have been informed that no forensic test of the alleged forged signatures of the complainant has been conducted so far to ascertain as to whether the signatures are forged or the real one. The amount for which the cheque was given has not been mentioned in the crime report. It is an admitted fact that the co-accused of the petitioner has been granted post-arrest bail by the court of competent jurisdiction

which remains unchallenged by the complainant. Any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would become entitled for the concession of post-arrest bail on the plea of consistency. In the case reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), the respondent was allowed pre-arrest bail by the learned High Court while the other similarly placed co-accused were granted bail after arrest. The complainant did not challenge the grant of bail after arrest to the similarly placed co-accused and sought cancellation of pre-arrest bail granted to the respondent before this Court by filing a criminal petition but this Court dismissed the petition for cancellation of bail by holding that "no useful purpose would be served if the bail of Zafar Ullah Khan respondent is cancelled on any technical ground because after arrest he would again be allowed bail on the ground that similarly placed other accused are already on bail." Keeping in view all the facts and circumstances, the case of the petitioner squarely falls within the purview 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, set aside the impugned order dated 22.10.2021 passed by the learned High Court and confirm the ad-interim pre-arrest bail granted by this Court vide order dated 03.12.2021.

JUDGE

JUDGE

JUDGE

Islamabad, the
12th of January, 2022
Approved For Reporting
Khurram