ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 336-B of 2021

Sajjad Hussain Shah

Versus

The State and another

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
04.	28.04.2021	Raja Mazhar Ali, Advocate for the petitioner / accused. Mr. Tasddaq Khurshid Abbasi, Advocate for the complainant. Syed Shahbaz Shah, State Counsel. Zafar Iqbal, A.S.I, P/S Bhara Kahu, Islamabad.

Through the instant petition, the petitioner seeks bail after arrest in a case F.I.R. No. 30/19, dated 25.01.2019, offences under section 420, 468, 471 & 489-F, P.P.C registered at police station Bhara Kahu, Islamabad.

02. It is alleged that accused / petitioner along with co-accused has tried to sell a plot to the complainant which was not owned by him and subsequently issued a cheque which was dishonored, hence the instant FIR.

03. Learned Counsel for the petitioner *inter-alia* contends that the accused / petitioner is innocent and has been implicated in this case with malafide intention; the accused / petitioner has got no concern with the alleged offence and no direct or indirect evidence is available against the petitioner / accused; the investigation in the case has been completed; the offence does not fall

within the prohibitory clause of Section 497 Cr.P.C, therefore, petitioner / accused is entitled for grant of the post arrest bail.

04. Conversely, Learned State Counsel assisted by the learned Counsel for the complainant opposed the instant bail petition and argued that the accused / petitioner is nominated in the FIR; the accused is involved in four other cases of similar nature, hence he is not entitled for grant of bail after arrest.

05. I have considered the arguments advanced by learned counsel for the petitioner / accused, learned Counsel for the Complainant and learned State Counsel on behalf of State and perused the record with their able assistance.

06. The offences under section 420 and 471 P.P.C are bailable, as far as section 468 P.P.C is concerned, it has been confirmed by the Investigating Officer during the course of arguments that the petitioner / accused has not prepared any forged document rather allegedly used some forged document as genuine, hence section 468 P.P.C is not attracted. As far as section 489-F is concerned, it does not fall under prohibitory clause of section 497 Cr.P.C.

07. Other three co-accused nominated in the FIR have been released on bail by the Courts of learned Additional Sessions Judge and learned Judicial Magistrate, Islamabad. The petitioner /

accused is also entitled for grant of bail on the principle of consistency. Reliance is placed on a case titled as ***"Ghulab Khan V. Chairman N.A.B and another" (2020 SCMR 285)***. The same principle has been laid down in cases titled as ***"Muhammad Daud and another V. The State and another" (2008 SCMR 173), "Sheraz V. The State" (2021 MLD 292) and "Muhammad Azam V. The State" (2008 SCMR 249).***

08. As far as contention of learned State Counsel, that the petitioner is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Hence in cases, where there is slight tilt towards grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in name of trial when conclusion thereof can competently impose due punishment for such released person. Further, learned State Counsel has not brought on record any material that petitioner / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be a ground to withhold the concession of bail in given circumstance. Reliance is placed upon the cases

of ***"Moundar and others V. The State (PLD 1990 SC 934), Babar Hussain V. State (2020 SCMR 871) and Muhammad Rafique V. State (1997 SCMR 412)".***

09. The offence does not fall under the prohibitory clause of section 497 Cr.P.C; petitioner/accused is previously non-convict; investigation in the case has been completed and the petitioner / accused is no more required for the purpose of investigation; he is behind the bars for the last more than 2 months and there is no chance of early conclusion of trial.

10. In this regard law has been laid down by the Hon'ble Supreme Court of Pakistan in a judgment reported as "*PLD 1995 Supreme Court 34 titled as "Tariq Bashir and others VS. The State"*, wherein, it is held that "*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 for 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, for example:-*

(a) where there is likelihood of abscondance of the accused;

(b) where there is apprehension of the accused tampering with the prosecution evidence;

(c) where there is danger of the offence being repeated if the accused is released on bail; and

(d) where the accused is a previous convict".

11. The same principle has been laid down in a case reported as "*PLD 2017 Supreme Court 733 titled as Muhammad Tanveer VS. The State and another",* wherein it is 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*". It has further been held that *"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in Section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions." (Emphasis added).* The same

principle has been laid down by the Hon'ble Supreme Court in cases reported as ***2011 SCMR 1708, 2016 SCMR 1439, 2020 SCMR 1258 and 2020 SCMR 717***, wherein it is held that "*where a case fell within non-prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably considered and should only denied in the exceptional circumstances"*.

12. It is well settled principle of law that while deciding the bail application, before recording of evidence in the trial Court, only tentative assessment is to be made by the Court and it is not permissible to go into details of evidence in one way or the other that might prejudice the case of either party. In this regard reliance is placed upon ***PLD 94 Supreme Court 65, PLD 94 Supreme Court 88, 2021 SCMR 111 and 2020 SCMR 937.***

13. I do not find this to be a case where bail should be refused as an exception. Ultimate conviction can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the accused for his unjustified incarceration if he is acquitted ultimately.

14. A tentative assessment of record shows that present petitioner has made out a case of further inquiry as envisaged under Section 497(2) Cr.P.C.

15. In view of above, instant petition is

accepted and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of **Rs. 50,000/- (Fifty Thousand only)** with one surety in the like amount to the satisfaction of learned trial Court.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal