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

**Criminal Misc. No. 340-B of 2021**

**Qazi Waqas-ur-Rehman**
**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. |
|---|---|---|
| 03. | 27.04.2021 | Mr. Mujtaba Zamani, Advocate for the Petitioner.<br>Raja Waqar Ahmed, Advocate for Respondent No. 2 / Complainant.<br>Mr. Zamurd Khan, learned State Counsel.<br>Sohail Ashraf, ASI, P.S Margalla |

Through the instant petition, the petitioner seeks bail after arrest in a case F.I.R. No. 33/2021, dated 29.01.2021, offence under section 489-F, P.P.C registered at police station Margalla, Islamabad.

02. It is alleged that the accused / petitioner has issued cheques to the complainant which were dishonored. Hence, the instant FIR.

03. Learned Counsel for the petitioner inter-alia contends that the accused / petitioner has falsely been implicated in this case; cheques issued, were guarantee cheques and there is no liability on part of the petitioner / accused to pay the amount to the complainant. Learned Counsel further contends that investigation in the case has been completed; that 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 states that the accused/petitioner is nominated in the FIR; issuance of cheques and their dishonouring is admitted by the petitioner, 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 State Counsel and learned Counsel for the Complainant and perused the record with their able assistance.**

**06. According to the prosecution story, it is alleged that the complainant has paid an amount of Rs. 7,000,000/- (Seven Million Only) to the accused / petitioner for purchase of a Villa but the complainant has neither produced any agreement nor any evidence regarding payment of said amount to the accused / petitioner. The intention / purpose of issuance the cheques shall be seen by the trial Court after recording of evidence.**

**07. The offence U/s 489-F, P.P.C 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.**

**08. 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".*

09. 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"***.**

**10. 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.***

**11. 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.**

**12. 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.**

**13. 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.**

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

**(TARIQ MEHMOOD JAHANGIRI)**
**JUDGE**

Ahmed Sheikh