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

Criminal Misc. No. 893-BC of 2021
Naeem Aftab
Vs
Nigar Tahir, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.01.2022	Mr. Adil Aziz Qazi, Advocate for the petitioner, Raja Zahoor-ul-Hassan, Advocate for respondent No.1, Mr. Aimal Amjad, State Counsel, Shahzad ASI with record.

This Crl. Misc. under Section 497(5) of the Code of Criminal Procedure, 1898 ("**Cr.P.C**"), is arising out of order dated 27.01.2021, passed by the learned Additional Sessions Judge-VII, Islamabad-West whereby respondent No.1/accused (Nigaar Tahir) was allowed pre-arrest bail in FIR No. 127, dated 07.04.2017, under Section 489-F PPC, Police Station Kohsar, Islamabad.

2. Relevant facts are that the petitioner got registered the subject FIR against the respondent No. 1 on the allegation of issuing cheque of Rs. 3500,000/- with dishonest intention as the same was dishonored when presented in the concerned bank. The respondent No. 2 applied for pre-arrest bail which was allowed by the learned ASJ-VII, Islamabad (West) vide impugned order impugned order, hence instant Criminal Miscellaneous for cancellation of bail.

3. Learned counsel for the petitioner argued that the bail granting order is erroneous as Section 30 of the Negotiable Instrument Act, 1881 was also considered; that respondent No. 1 remained absconder for about 3 year without any explanation while he has also filed suit for recovery under Order XXXVII Rules 1 & 2 CPC, which has been decreed

against the respondent No.1. learned counsel relied upon case law reported as 2019 SCMR 1129.

4. On the other hand, learned counsel for respondent No.1 contended that there was business transaction between the complainant and the husband of respondent, which relates to the purchase of 10 plots in Kashmir Housing Society Quetta, in lieu of which, respondent's husband paid the amount through cheques in order to honour his part of obligation. As the husband of the respondent No.1 was unable to perform his part of deal, the said cheques were issued to the complainant.

5. He further contended that there was another agreement executed at the Police Station Mir Pur between the parties on 11.10.2018 to settle the dispute where the respondent's husband has handed over seven cheques worth Rs. 35,00,000/- and it was agreed between the parties that the complainant will return 10 files of the plots in the said scheme and the complainant has drawn Rs.20,00,000/- from the account of respondent's husband and 1500,000/- is remaining in lieu of 5 files of the plots in the said scheme, which were presented to the Investigating Officer on 16.01.2021 and the Investigating Officer recorded the statement of the respondent No.1, who handed over cheques of different dates and the details of account of her husband to him.

6. Arguments heard. Record perused.

7. It is settled principle that for cancellation of bail strong and exceptional ground are required besides to show that the bail granting order is erroneous, accused has misused the concession of bail, tried to hamper prosecution evidence, likelihood of absconsion, attempted to interfere with investigation, and some fresh facts and material

has been collected during investigation. Reliance is palaced upon case of "***Samiuallah & another v. Laiq Zada & another***" **(2020 SCMR 1115) followed in criminal petition NO. 1459/2020, 1523/2020, 970 to 976/2021 and Criminal Petition No. 1145-L/2020.**

8. The sole ground pressed in support of this petition is that the learned ASJ while extending pre-arrest bail to respondent No. 1 merely relied upon non issuance of notice under Section 30 of the Negotiable Instrument Act, 1881.

9. Perusal of impugned order reveals that besides considering the above ground, the learned ASJ has further highlighted dishonestly as defined under Section 24 PPC as well as Section 23 PPC which defines wrongful loss and wrongful gain under Pakistan Penal Code and also considered the other aspects of the case as well punishment of the offence being not falling within the prohibitory clause of Section 497 Cr.P.C. and that her case is one of further inquiry.

10. The learned counsel for the petitoner remained unable to advance any exceptional ground which could be made basis to upset the impugned order which, in the attending circumstances of the case appears to be just and proper. In addition, no ground warranting cancellation has been argued. The instant Crl. Misc. is **dismissed** accordingly.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*