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

Criminal Misc. No. 19-B/2022
Muhammad Zahid
Versus
The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.01.2022	Mr. Naveed Akhtar Rajpoot, Advocate for the petitioner. Mr. Asad Ullah Taimoor, State Counsel. Mr. Adnan Altaf Bhatti, Advocate for complainant. Sohail Ashraf ASI with record.

The petitioner *(Muhammad Zahid)* seeks bail in case FIR No.229/20 dated 01.12.2020 registered at Police Station Margalla, Islamabad, under section 489-F PPC.

2 Perusal of the investigation record with the assistance of the State counsel shows that the petitioner concealed himself for almost 11 months. A proclamation u/s 87 Cr.PC was issued on 27.07.2021. He was arrested on 22.10.2021. It also appears that he was nominated in eight FIRs; four under section 489-F PPC and three under sections 420/468/471 etc. PPC. The first FIR was registered in 2017, the last in 2020. He told the police on arrest that he was a property dealer.

3 The dishonoured cheque in question was issued by the petitioner to get post-arrest bail in case FIR no.366/20 under sections 420/468/471/34 PPC. FIR 366/20 was filed by Sajjad s/o Karam (*Sajjad*). The petitioner and Sajjad signed a compromise deed, where under the petitioner issued the cheque in question and Sajjad agreed to the petitioner being released on bail, conditional on the cheque being honoured. In the compromise deed, the petitioner admitted the sale of a car

to the complainant, found tampered later, and accepted his obligation to repay the sale price through the cheque which was dishonoured on presentation for the reason that the bank account was closed. Sajjad then lodged the instant FIR. Recording this compromise deed, the learned Judicial Magistrate granted the petitioner bail in the case under FIR no. 366/20 vide order dated 27.08.2020. The said order in material part reads as follows:-

> "He stated that he has no objection if the accused be conditionally released on bail … In view of above, instant post arrest bail application of the accused is hereby conditionally accepted subject to furnishing bail bonds … Complainant is at liberty to apply for cancellation of bail, if the terms and conditions specified in Mark-B, not complied with."

4 Pleading for bail, the petitioner's counsel contended that the petitioner had been falsely implicated in the above mentioned case (which however does not stand to scrutiny in view of the compromise deed). He further contended that the petitioner was incarcerated for the last three months, the investigation was complete, and no useful purpose will be served to keep him incarcerated. He pleaded that the petitioner was entitled to the concession of bail as the offence under section 489-F does not fall within the ambit of the prohibitory clause of section 497 CrPC and relied in this behalf on the leading *Tariq Bashir case (PLD 1995 SC 34)*. The main thrust of his arguments, however, remained that the cheque was issued in furtherance of a contractual stipulation whereby the complainant's remedy was reserved by way of cancellation of bail in case FIR No.366/2020, rather than registration of a criminal case for dishonor of the cheque issued per the terms of the compromise deed, and that the complainant had already availed his contractual remedy by moving the trial court for cancellation of bail. He further cited the following precedents:-

i. 2020 SCMR 871; 2010 YLR 624
   Mere nomination in other cases of similar nature without conviction is not a ground per se to refuse bail.

ii. 2017 SCMR 728
درخواست ضمانت پر فیصلہ دینا انسان کی آزادی سے متعلق ہوتا ہے۔ ایسی درخواست کو سرسری بے قاعدگی یا عدم توجہ یا رسماً نہ لیا جائے بلکہ اس قسم کی درخواست پر فیصلہ مسلمہ اُصولوں کی بنیاد پر کیا جائے جس کی رُو سے دُوران سماعت درخواست کسی بھی معقول شک کا فائدہ ملزم کو دیا جانا لازمی ہے۔

iii. 2016 PCr.LJ 769
If a cheque is issued as security, recovery could not be effected through criminal proceedings.

iv. 2015 MLD 1266
Bail not to be denied where cheque in question issued in a business transaction with civil litigation culminating into criminal litigation.

5 Rebutting, the complainant's counsel pleaded that the cheque was issued towards the *fulfillment of an obligation* admitted by the petitioner per the compromise deed, and that too before a court of law, that issuing a cheque against a closed account was irrefutable evidence of the *dishonesty* of the petitioner when he issued the cheque, that the remedy of cancellation of bail was pending before the relevant court, and, above all, that the offence in the case at hand was an independent offence to be tried in its own right and was not tied to the outcome of the case FIR No.366/20. He cited the following:-

i. 2010 PCr.LJ 504
Offence under section 489-F PPC was an independent offence where it arose in consequence of a compromise leading to the issuance of cheque that was subsequently dishonoured. (Bail was disallowed).

ii. 2004 SCMR 283
Bail was cancelled where accused secured his release on bail by abusing the process of court.

iii. 2009 SCMR 174
Grant of bail in case not falling within the domain of prohibitory clause is not rule of universal application and each case is to be seen through its own facts and circumstances. The accused being involved in previous cases of similar kind was to be taken, prima facie, as an habitual offender of issuing cheques and defrauding the people. Entering into a compromise in one case, getting acquittal in another case and a bail order having been issued in third case could not be simply ignored at the time of grant of bail.

iv. 2007 PCr.LJ 388
Bail before arrest recalled where the cheque was dishonoured because of the account being closed.

6 Learned State counsel affirmed that eight FIRs were registered against the petitioner out of which four were for dishonor of cheques with different parties. He supported the arguments of the complainant noted above.

7 The seminal *Tariq Bashir* case cited earlier is as much authority for the principle that the grant of bail in non-bailable offences is not a right but a concession, as it is authority for the rule that grant of bail in offences not falling within the ambit of the prohibitory clause is the rule and refusal an exception, with the exception becoming operative where, as a result of bail being granted, there was (i) the likelihood of the accused absconding, (ii) an apprehension of the accused tampering with the prosecution evidence, or (iii) the danger of the offence being repeated. The exception could also be operative if the accused was a previous convict. These are now common parlance for the practitioners and judges as the "four exceptions". *Tariq Bashir* did not intend the exceptions to be limited to four, citing these as illustrative only, but with time and precedent these have come to be recognized as the ones to look out for. The four exceptions are reiterated in numerous cases, e.g. *Zafar Iqbal versus Muhammad Anwar and others*, *2009 SCMR 1488*, and more recently, *Muhammad Imran versus The State, PLD 2021 SC 903*.

8 *Zafar Iqbal* case is cited most for grant of bail under section 489-F PPC where the dishonoured cheque was issued *(twice in Zafar Iqbal)* by way of guarantee for repayment. In *Zafar Iqbal*, bail was granted by the Supreme Court despite cancellation *(twice)* of the bail with the second cancellation by the High Court. I read that

case, however, as one where the Supreme Court's decision to grant bail was driven by the repayment of a substantial sum by the accused by the time the Supreme Court heard the bail application (see the last paragraph of the law report) and that the criminal litigation had followed earlier civil litigation.

9 I find *Muhammad Imran versus The State, PLD 2021 SC 903,* to be much closer to the factual matrix before me; almost on all fours. The Hon'ble Supreme Court in *Muhammad Imran* found two of the four exceptions arising in that case: multiple FIRs for similar offences and abscondence of the accused. Both these exceptions apply in this case too – see paragraph 2 above. With four different FIRs of dishonoured cheques by the petitioner issued in favor of different parties, this case falls squarely within the third exception: there is the apprehension of repetition of the offence if the petitioner were to be released on bail.

10 The aggravating circumstance (perhaps I may call it an 'extraordinary circumstance' of the ilk of the four exceptions) is that the petitioner issued the cheque in furtherance of the signed compromise deed filed before a Court to secure bail from that Court, either knowing that the bank account on which the cheque was drawn was already closed or closing the account after bail – I cannot say with certainty – but the end result does not change in either case, rather, if latter, that would make it all the more wicked for taking steps to defeat a solemn undertaking before a Court. I refrain from commenting any further as to what additional offence this fact might constitute.

11 In view of the forgoing, I am not inclined to extend the concession of bail to the petitioner for the non-bailable offence under section 489-F. Resultantly, this bail petition is dismissed.

12 I add that all observations made in deciding this bail petition are tentative only and shall have no bearing on the merits of the case which is to be decided on the basis of the evidence led therein.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

Approved for reporting.