ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc.No.169-B of 2022
Arshad Majeed Khan
Versus
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2022	**Rana Nadeem Ahmed, Advocate for the petitioner** **Malik Abdur Rehman, learned State Counsel along with Riaz, A.S.I.** **Ch. Muhammad Javed Gujjar, Advocate for respondent No.2**

Through the instant criminal miscellaneous petition, the petitioner, Arshad Majeed Khan S/o Abdul Majeed Khan, seeks bail after arrest in case F.I.R. No.365, dated 21.08.2019 for offence under Section 489-F Pakistan Penal Code, 1860 ("P.P.C.") registered at Police Station *Kohsar*, Islamabad.

2. Earlier this Court vide order dated 07.10.2019 passed in Crl.Misc.No.588-B/2019 granted bail to the petitioner on the basis of a compromise subject to fulfillment of his undertaking that he would pay the remaining amount of Rs.70,00,000/- by 04.01.2020. Since the petitioner failed to honour his undertaking made before this Court and recorded in the said order dated 07.10.2019, the complainant, on 26.09.2020, filed a petition under Section 497(5) of the Cr.P.C. for cancellation of bail granted to the petitioner. Vide order dated 01.02.2021, the said cancellation petition was allowed and as a result, the bail granting order dated 07.10.2019 was recalled. The petitioner was arrested on 21.08.2021. The petitioner once again applied to the Courts of learned Judicial Magistrate and Additional Sessions Judge for the grant of bail after arrest. The petitioner's plea for post-arrest bail did not find favour with the learned Judicial Magistrate and Additional

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Sessions Judge, who dismissed the same vide orders dated 26.01.2022 and 08.02.2022, respectively. Hence, this petition.

3. It is *inter alia* submitted by the learned counsel for the petitioner that the dispute between the parties is of a civil nature and the complainant has unnecessarily set the criminal machinery into motion only to cause unnecessary harassment and humiliation to the petitioner; that the complainant, on 18.09.2019, filed a suit under Order XXXVII, Rules 1 and 2 C.P.C. for recovery of an amount of Rs.1,00,00,000/-, which is pending adjudication before the Court of competent jurisdiction; and that the offence being punishable with imprisonment of three years does not fall within the prohibitory clause of Section 497 Cr.P.C. Learned counsel prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned State Counsel assisted by learned counsel for the complainant vehemently opposed the petition by stating that indeed the petitioner was granted bail by this Court on the basis of a compromise/undertaking sworn before this Court to the effect that he would pay the remaining amount i.e. Rs.70,00,000/- within a period of four months; that since the petitioner failed to honour the undertaking that had been made by him before this Court, his bail granting order was recalled by this Court vide order dated 01.02.2021; that the petitioner's failure to honour his undertaking amounts to misuse of the concession of bail; that this Court should not have shown leniency to the petitioner by granting him bail vide order dated 07.10.2019; and that the learned Courts below had rightly dismissed the petitioner's post arrest bail petition. Learned counsel has prayed for the bail petition to be dismissed.

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5. I have heard the contentions of the learned counsel for the parties and perused the record with their able assistance.

6. Indeed, the petitioner was earlier granted bail by this Court vide order dated 07.10.2019 passed in Crl.Misc.No.588-B/2019 on the basis of an undertaking that had been sworn by petitioner in the Court to the effect that he would pay an amount of Rs.70,00,000/- to the complainant by 04.01.2020. Later when the petitioner failed to abide by the terms of his undertaking on the basis of which he was allowed bail, the complainant filed a petition for cancellation of bail, which was allowed and as a result the petitioner's bail granting order was recalled by this Court vide order dated 01.02.2021. Now, the petitioner has once again approached this Court for the grant of bail mainly on the ground that this Court should not have withdrawn the bail granting order of the petitioner and that the learned Courts below were not justified in rejecting the petitioner's bail petitions on account of the fact that he did not comply with the terms and conditions of the so called undertaking. It was also contended that for the purpose of recovery of the amount in question, the complainant has already filed a suit under Order XXXVII C.P.C. before the competent Court of law.

7. As regards the ground taken by the learned counsel that the complainant has already filed a suit for recovery of the amount in question under Section XXXVII C.P.C. before the Court of competent jurisdiction, suffice it to say that the filing of such a suit cannot be made the basis for the grant of relief of post-arrest bail in every case unless there are *malafides* either on the part of the police or the complainant to falsely implicate him in the F.I.R.. Even otherwise, it is well settled that there is no bar on initiating civil and criminal proceedings simultaneously as both can run side by side with varying results. Reliance is

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placed in this regard to the case of Seema Fareed Vs. The State (2008 SCMR 839), wherein it has been *inter alia* observed as under:-

> ***"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."***

8. In the case of Shahid Sultan Durrani Vs. The State (2021 SCMR 827) passed in Crl. Petition No.117/2021, the Hon'ble Supreme Court, while granting conditional pre-arrest bail to the accused on payment of the disputed amount within a stipulated time, *inter alia,* held as follows:-

> ***"Considering the circumstances of the case and the prayer made by the petitioner, he is directed to pay whole amount of two cheques (bearing No.D81502917 and No.D31502916 dated 25.08.2020) i.e. Rs.40,00,000/- (Rupees forty lac only) to the complainant of the case Sajjad Ahmed within a period of one month and fifteen days i.e. by or before 19th of April, 2021 and till then he shall not be arrested in this case. However, it is made clear that if the petitioner fails to honour his commitment and does not pay an amount of Rs.40,00,000/- (Rupees forty lac only), as undertaken by him, to the complainant by the said date, the restraining order shall lapse automatically and police shall be at liberty to arrest him in this case."***
>
> **(Emphasis added)**

9. In the above referred case, the Hon'ble Supreme Court, while granting bail to the accused, had categorically directed the police that in case the accused fails to honour his commitment and does not pay the amount, as undertaken by him, to the complainant within the stipulated period, the police shall be at liberty to arrest him.

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10. As mentioned above, in the case at hand, the petitioner himself swore an undertaking and later failed to honour the terms of the same which resulted in recalling his bail granting order.

11. The conduct of the petitioner demonstrates that soon after getting bail from this Court on 07.10.2019, he failed to appear before the learned trial Court as and when case was fixed for hearing which resulted in him being declared a proclaimed offender on 12.09.2021 as revealed through the order dated 26.01.2022 passed by the learned Judicial Magistrate Section-30, Islamabad. By not appearing before the magisterial court, the petitioner had clearly misused the concession of bail. The petitioner has failed to furnish any plausible explanation as to why he did not join the proceedings before the trial Court. His bail petition is liable to be dismissed on account of his conduct of misusing the process of Court.

12. It is by now settled law that fugitive from law and Courts loses some of his normal rights granted by the procedure as well as substantive law and the unexplained 'abscondance' of accused disentitles him to the concession of bail, notwithstanding the merits of the case. Reliance is placed on the case of Muhammad Sadiq Vs. Sadiq and others (PLD 1985 SC 182). In the case at hand, the petitioner went into hiding for almost two years deliberately and thereby misused the concession of bail. Such conduct of the petitioner would be sufficient to disentitle him for the concession of bail.

13. It evinces from the record that the petitioner is also involved in another case of similar nature (i.e., F.I.R. No.46/2018, dated 02.02.2018 offence under Sections 489-F and 34 PPC registered at police station Kohsar).

14. Keeping in view the abscondance as well as conduct of the petitioner, I am of the opinion that the petitioner is not entitled to the concession of bail

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especially when a huge amount is alleged to have been paid to the complainant. The accumulative effect of what has been discussed above is that, at this stage the petitioner has failed to make out a case for grant of post arrest bail in his favour. Consequently, the instant bail petition is dismissed. The investigating officer is in attendance and submits that the *challan* has been submitted before the Court. It is expected that the learned trial Court would proceed with the matter expeditiously and conclude the same within a period of three months.

15. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice the case of either party during the course of the trial.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

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