ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 329-B of 2022

Khalid Nadeem Kiyani
Vs.
The State & another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	18.04.2022	Ch. Abid Hussain Chohan, Advocate for petitioner. Ms. Rukhshanda Azher, Advocate for respondent/complainant. Syed Shahbaz Shah, State Counsel along with Sajid Iqbal, ASI.

Through this Criminal Miscellaneous, petitioner-accused (*Khalid NadeemKiyani*) has prayed for pre-arrest bail in FIR No. 552, dated 20.10.2021, under Section 489-F PPC, registered with Police Station LohiBhair, Islamabad.

2. According to the allegations set-forth in the FIR, petitioner borrowed Rs.20,50,000/- from the complainant-respondent No.2 and on demand of the latter for the return of the loan amount, issued cheque worth Rs.20,00,000/- which on presentation stood dishonored by the concerned bank, due to insufficient funds. Hence, instant FIR.

3. Learned counsel for the petitioner argued that that there were business relations between the petitioner and the complainant; that it was a surety cheque; that notice in terms of Section 30 of the Negotiable Instrument Act, 1881 had not been served upon the petitioner; that a suit for declaration, rendition of accounts and the cancellation of cheque filed by the petitioner is pending before the learned Civil Court at Rawalpindi; that the cheque was issued pursuant to

a business meeting in good faith for the purpose of expansion of business; that there is delay in lodging the FIR; that the very registration of the FIR is tainted with malafide; that petitioner retains no criminal record and, therefore, entitled to the concession of pre-arrest bail.

4. On the other hand, learned counsel for the complainant argued that issuance of cheque is an admitted fact while its dishonouring for want of sufficient funds, prima facie, constitute offence under Section 489-F PPC while element of malafide as alleged warrants investigation and cannot be made basis to exercise extra ordinary discretion in favour of the petitioner.

5. Learned State Counsel in support of his submission refers order dated 29.06.2021 passed by this Court in Crl. Misc. No. 395-BC of 2021 wherein pre-arrest bail allowed by the learned lower Court in offence under Section 489-F was cancelled.

6. Arguments heard, record perused.

7. Before adverting to the merits of the case, it is necessary to mention that pre-arrest bail is an extra ordinary remedy, to be extended by diverting usual course of law for the purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique. The protection is based upon equity and cannot be extended in every criminal case, prima facie, founded upon incriminatory evidence, warranting custody for investigation purposes. Reliance is placed upon case of *'Maqbool Ahmad Mahessar and others v. National Accountability Bureau (NAB) through Chairman and others* (**2021 SCMR 1166**), wherein it has been held that;-

> *"Similarly, grant of pre-arrest bail in a cognizable/non-bailable offence is a*

> *remedy, most extraordinary in the nature of judicial protection, extended by diverting usual course of law for the sole purpose of protecting reputation and honour of an innocent citizen, being hounded through abuse of process of law for purposes sinister and oblique; the protection is based upon equity and cannot be extended in every run of the mill criminal case prima facie founded upon incriminatory evidence, warranting custody for investigative purposes"*

8. It is by now well settled that accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of evidence consequent upon arrest. Reliance is placed upon *'Kamran Ataullah and another v. The State* (**2021 SCMR 449**), wherein it has been graciously held that;-

> *"It is by now well settled that the accused in a criminal case cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially include arrest in order to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offence through collection of information/evidence consequent upon arrest."*

9. In the present case, issuance of cheque is an admitted fact while it did not contain any writing to show that it was a surety cheque as alleged by the petitioner. The admission to have issue the said cheque by the petitioner in favour of the complainant and its dishonouring for want of funds, *prima facie*, constitute element of dishonesty, a pre-requisite for offence under Section 489-F PPC.

10. The subject FIR was registered on 20.10.2021 while the petitioner filed suit for its cancellation after

about five months of its registration on 19.03.2022. This aspect therefore, does not lend any favour to the petitioner to substantiate malice or malafide on the part of the complainant.

11. In addition, it is also noticed that petitioner has not advanced any incriminating material during investigation to substantiate claim of having business terms with the complainant and that the cheque was issued as a surety pursuant to any negotiations.

12. The tentative assessment of the record indicates that sufficient incriminating evidence in the shape of statement of the complainant, cheque and dishonor slip together with statement of concerned bank manager, prima facie, exists on record which warrants custody of the petitioner for the purpose of investigation.

13. In view of above, petitioner has not been able to make out a case for exercise of extra ordinary discretion of pre-arrest bail. Consequently, instant criminal miscellaneous is **dismissed**. Ad-interim bail granted to the petitioner vide order dated 25.03.2022 is recalled.

14. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R. ANSARI