ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 751-B of 2022

Mst. Uzma Shakeel

Vs.
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.
	29.07.2022	Raja Muhammad Farooq, Advocate for petitioner. Mr. Rashad-ul-Musawwar, Advocate for respondent Mian Zain Qureshi, State Counsel along with Mian Shahbaz Shah, inspector/I.O & Sehar Kausar, Constable.

Through the instant Criminal Miscellaneous, petitioner (Mst. Uzma Shakeel) prays for pre-arrest bail in FIR No. 315, dated 28.03.2022, under Section 489-F PPC, registered with Police Station Ramna, Islamabad.

2. According to the allegations set-forth in the FIR, on being failure to complete a sale transaction, petitioner issued cheque worth Rs. 3,72,00,000/- which, on presentation stood dishonored by the concerned bank, due to insufficient funds, hence the FIR

3. Learned counsel argued that the matter is of civil nature which has been converted into criminal just to exert pressure on the petitioner; that it was the complainant who failed to fulfill his part of obligation under the agreement; that the FIR has been lodged with the delay of more than three months as the cheque in question was dishonored on 27.10.2021, while the FIR was lodged on 28.03.2022; that the FIR can be splitted into three transactions that allegedly took place between the complainant and the petitioner, but surprisingly for all those transactions, single cheque is being issued by the petitioner which casts shadow upon the veracity of the allegations; that the element of malafide is substituted by signing the agreement by the parties; that it is a case of specific performance of

agreement and that the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore it is a fit case for grant of pre-arrest bail. Learned counsel relied upon case laws reported as ***2013 SCMR 51, PLD 2017 SC 730, 2021 PCr.LJ 1549, 2022 SCMR 592, PLD 2021 SC 708 and 2018 YLR 999.***

4. On the other hand, learned counsel for the complainant argued that the issue of non-fulfillment of obligation under an agreement was never challenged by the petitioner before any court; that petitioner is a habitual offender involved other cases of like nature; that there is no clause in the agreement to show that the cheque was issued as a guarantee and that case of the petitioner falls within the exception, therefore, instant petition may be dismissed. Learned counsel placed reliance upon case laws reported as ***2021 PCr.LJ 636, 2021 PCr.LJ 1300 and 2016 SCMR 2064.***

5. Learned State Counsel added that there is apprehension of repetition of offence as the petitioner is habitual offender, therefore, in view of the law laid down by the Hon'ble apex Court in ***Crl. Petition No.860-L of 2021 and Crl. Petition No.529 of 2021***, not entitled to the concession of pre-arrest bail.

6. Arguments heard, record perused.

7. Record reveals that there was series of transactions between the parties which took place at different times and as per the allegations leveled by the complainant in the instant FIR for all the said transactions the petitioner provided him with a cheque to settle the outstanding amount which was dishonored. It has to been seen that the punishment provided for the alleged offence may extend to three years, and is also punishable with fine or with both, which does not fall within the ambit of prohibitory clause of Section 497 of Cr.P.C. It is also settled principle of law that while deciding a bail application the lessor punishment provided in the statue has to be considered. The very fact that the punishment does not fall within the prohibitory clause has been

dealt with by the Hon'ble Apex and guidance is solicited from the recent judgment pronounced by the Hon'ble Supreme Court of Pakistan reported as **"*Jehanzeb Khan v. The State through A.G. Khyber Pakhtun khawa and others*"** (**2020 SCMR 1268**). Guidance is also solicited from case law reported as ***Shakeel Shah v. The State (2022 SCMR 1)*** & ***Dr. Muhammad Tariq v. The State (2017 SCMR 1944).*** The Hon'ble apex Court in a recent pronouncement in the case of ***ShahzadaQaiserArfat alias Qaiser v. The State and another"*** **(PLD 2021 Supreme Court 708)** has graciously held that:-

> *"the power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of* ***liberty, dignity, due process and fair trial****. Pre-arrest bail is in the nature of a check on the police power to arrest a person.* ***The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail****, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining* ***whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing mala fide on part of the complainant or the Police for granting pre-arrest bail does not appear to be correct****, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of mala fide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the mala fide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove mala fide on their part."*
> *(Emphasis added)*

Further reliance is placed upon the Hon'ble Apex Courts pronouncement reported as PLD 2017 SC 730 wherein it has been held as under:-

> *"Offences with which accused persons were charged were punishable by way of imprisonment which did not fall within the prohibitory part of Section 497, Cr.P.C --- when the accused person were entitled to post arrest bail, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone---Accused persons were likely to be humiliated and disgraced due to their arrest at the hands of the local police."*

8. It is settled principle that every criminal case is to be seen in its own peculiar facts and circumstances and that while deciding a bail application only tentative assessment of the material collected by the prosecution is to be made.

9. In the present case, the cheque in question has already been taken into possession through seizure memo, nothing has to be recovered from the possession of the petitioner and she has joined investigation as per the statement of the investigating officer, civil suits are pending between the parties, the complainant/respondent has already filed a suit under order XXXVII CPC for recovery of the alleged amount and the petitioner has also filed a suit.

10. In view of above tentative assessment, instant Criminal Misc. is **allowed**. Ad-interim bail already granted to the petitioner vide order dated 09.06.2022 is confirmed subject to her furnishing fresh bail bonds to the tune of Rs.100,000/- (Rupees one hundred thousand) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. The observations made herein above are tentative in nature and shall not prejudice the case of either party.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//