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

Crl. Misc. No.359-B of 2025

Kainat Masood Petitioner

Versus

The State, etc. Respondents

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.03.2025	Mr. Yasar Munir Khan, Advocate for Petitioner. Mr. Muhammad Abdul Hassan, Advocate for the complainant. Ms. Bilqees Rahat, State Counsel. Mr. Raheel, ASI/IO.

Muhammad Asif, J. Through the instant petition, the Petitioner/accused (Kainat Masood) seeks post-arrest bail in case FIR No.296/2024, dated 06.04.2024, offence under section 489-F PPC, registered with Police Station Kohsar, Islamabad. Her earlier bail petitions, filed before the learned Judicial Magistrate Section-30, Islamabad-West and learned Additional Sessions Judge-IX, Islamabad-West, were dismissed, vide orders dated 05.06.2024 and 07.01.2025, respectively.

2. The facts of the case are elaborately mentioned in the bail petition and FIR, the same need not be reproduced.

3. The learned counsel for the petitioner mainly contends that the petitioner has been falsely roped in this case against the facts and circumstances; that she neither has any specific role nor committed any offence; that there is no element of absconcion. He further contends that the offence does not fall within the ambit of the prohibitory clause of Section 489-F PPC. Contends that the investigation to the extent of the petitioner has been completed and her further incarceration would not serve any purpose to the prosecution, therefore, the petitioner deserves to be granted bail.

4. Inversely, learned State Counsel assisted by learned counsel for the complainant, opposed this bail petition on the grounds that the petitioner under the garb of investment defrauded the complainant and dishonestly issued the cheque in question; that the petitioner is a habitual offender and she is in a habit of repeating the same offence; that other F.I.Rs have already been registered against the petitioner in respect of the same offence; that no one can claim bail as a matter of right, if offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C, therefore, this petition may be dismissed.

5. I have heard the learned counsel for the petitioner as well as learned State Counsel assisted by learned counsel for the complainant and perused the available record.

6. The merit of the bail is not discussed as the same may prejudice the case of either party. The record reflects that the subject cheque, bearing the signature of the petitioner, was issued to the complainant in the background of investment in "ISMMART Group of Industries", which got bounced/dishonored due to being close/inactive account on presentation by the concerned Bank.

7. Admittedly, the petitioner is currently in custody, and the investigation in the present case has been completed. The Petitioner/accused is no longer required by the police for investigative purposes. Furthermore, the offence does not fall within the prohibitory clause of Section 497 Cr.P.C, as the maximum sentence under Section 489-F P.P.C is three years. In cases of this nature, the grant of bail is the general rule, while refusal is an exception, as established in the cases of *Riaz Jafar Natiq* **(2011 SCMR 1708**), *Tariq Bashir v. The State* **(PLD 1995 SC 34)** and *Sheikh Abdul Raheem v. The State and another* (2021 SCMR 822).

8. Further the Honourable Supreme Court in the case of *Muhammad Taveer v. The State & another*" **(PLD 2017 Supreme Court 733)**, the Hon'ble held that once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by

this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts.

9. As far as the arguments of learned State Counsel that the petitioner is involved in several cases of a similar nature, which shows that the applicant is a habitual offender. It is suffice to say that mere registration of cases by itself is not sufficient to declare an accused as a habitual offender unless it is proved/established that he has been convicted. Reliance is placed on the case titled as *Jafar @ Jaferi v. The State* **(2012 SCMR 606)**.

10. No doubt, in a post-arrest bail, only tentative assessment is to be made, and deeper appreciation or evaluation of evidence at this stage is neither desirable nor permissible but the benefit of the doubt can be extended to the accused even at bail stage, if the facts of the case so warrant. I fortify my view from the case law reported as *Resham Khan and another Vs. The State* **(2021 SCMR 2011)**, wherein the Hon'ble Supreme Court of Pakistan in paragraph No.8 of the judgment has held as under:-

> *"…The insight and astuteness of further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry presupposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. It is well settled that object of trial is to make an*

> *accused to face the trial and not to punish an under trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved and benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not…".*

11. The petitioner has been behind bars since her arrest; the investigation is complete to her extent, and she is no longer required for further investigation, therefore, the petitioner's captivity would not serve any useful purpose. I am of the view that from the facts and circumstances of the case, the petitioner's case squarely falls within the purview of Subsection (2) of Section 497 Cr.P.C, and bail could not be withheld as a strategy of punishment. Moreover, keeping the petitioner incarcerated would be tantamount to punishing him before the conclusion of the trial. Guidance is sought from the case titled as *Husnain Mustafa vs. The State* **(2019 SCMR 1914).**

12. Resultantly, the instant petition is allowed and the petitioner/accused is directed to be released on bail subject to furnishing solvent surety in sum of Rs.500,000/- (Five Hundred Thousands Rupees) with two sureties each and Personal Recognizance (PR) bond in the like amount to the satisfaction of the trial Court who shall ensure that sureties must be local, reliable and man of means.

13. Observations made in this order are tentative in nature, which shall in no way prejudice the proceedings before the learned trial court, where the case be decided on its own merits after recording evidence.

(MUHAMMAD ASIF)
JUDGE

Shoaib