JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.480-B of 2016

Inayat Ullah Khan Abdali
Versus
The State and another

Date of Hearing:	**23.12.2016**
Petitioner by:	**Sardar Muhammad Tariq Fareed Gopang, Advocate**
Respondents by:	**Mr. Muhammad Sajid Hussain, learned State Counsel with Amir Umar ASI, Raja Khurram Farrukh, Advocate for respondent No.2/complainant.**

MIANGUL HASSAN AURANGZEB J:- Through this common judgment, I propose to dispose of Bail Petition No.480-B/2016 and Writ Petition No.2856/2016, since they involve the common questions of law and fact.

2. Through bail petition No.480-B/2016, the petitioner, Inayat Ullah Khan Abdali, seeks pre-arrest bail in case FIR No.259, dated 24.06.2016, registered at Police Station Kohsar, Islamabad, under Sections 420, 468 and 471 of the Pakistan Penal Code ("PPC"). This FIR was registered on the complaint of Umer Farooq Adam ("complainant"). In the said FIR, it is alleged that the complainant is a lawyer by profession, and that the petitioner was the complainant's client; that cheque No.9106901 for an amount of Rs.15,00,000/- was given by the complainant to the petitioner for investment purposes; that the petitioner against the said cheque had illegally and fraudulently registered FIR No.364, dated 05.08.2015 under Section 489-F, PPC against the complainant/respondent No.2; that after the registration of FIR No.364/2015, it transpired that the said cheque was never presented for encashment at the Silk Bank Limited; that at no stage has the dishonour slip been issued by Silk Bank Limited with respect to the said cheque; that FIR No.364/2015 was registered on the petitioner's complaint with malafide intentions of harassing the complainant so that the petitioner does not return the amount which had been invested by the complainant;

and that the complainant wanted criminal proceedings to be initiated against the petitioner.

3. On 25.06.2016, the petitioner filed a petition under Section 498 Cr.P.C. for bail before arrest in case FIR No.259/2016, before the Court of the learned Additional District & Sessions Judge, Islamabad. Vide order dated 29.07.2016, the learned Trial Court dismissed the said bail petition. Thereafter, on 01.08.2016, the petitioner filed a petition (No.480-B/2016) for bail before arrest before this Court. Vide order dated 01.08.2016, this Court granted ad-interim pre-arrest bail to the petitioner.

4. On 29.07.2016, (i.e. before the dismissal of the petitioner's pre-arrest bail petition by the learned Trial Court), the petitioner sought the quashment of FIR No.259/2016, by filing a writ petition under Article 199 of the Constitution read with Section 561-A Cr.P.C., before this Court.

5. Learned counsel for the petitioner submitted that the allegations leveled against the petitioner in FIR No.259/2016 are fabricated; that prior to the registration of FIR No.259/2016 by the complainant against the petitioner, the petitioner had registered FIR No.364/2015, against the complainant under Section 489-F PPC, because he had issued cheque No.9106901 in the petitioner's favour, which cheque was dishonored on presentation; that the complainant is the Additional Advocate General in the Province of Khyber Pakhtunkhwa, and was using his influence in getting a false case registered against the petitioner; that the complainant had remained the petitioner's lawyer and had taken Rs.46,00,000/- from the petitioner; that the petitioner is not a habitual offender and has no criminal history; that in the case FIR No.364/2015, Umer Farooq Adam has neither applied for bail, nor has he been arrested by the local police; that FIR No.259/2016 had been registered against the petitioner with a malafide motive and as a counterblast to FIR No.364/2015. The learned counsel for the petitioner prayed for the confirmation of the petitioner's bail before arrest, and for the quashment of FIR No.259/2016, dated 24.06.2016.

6. On the other hand, the learned State Counsel submitted that the Court of the learned Additional Sessions Judge,

Islamabad vide order dated 29.07.2016 dismissed the petitioner's bail before arrest; that during investigation, it has been revealed that the dishonor slip regarding cheque No.9106901 is fake; that the stamps on the cheque No.9106901 are also fake, and so is the cheque return memo; that the petitioner has the alternative remedy of seeking the discharge of the case from the learned Trial Court; that *challan* in the case has already been submitted. The learned State Counsel prayed for both W.P. No.2850/2016 and bail petition No.480-B/2016 to be dismissed.

7. I have heard the contentions of the learned counsel for the petitioner and the learned State Counsel, and have perused the record with their able assistance.

8. The entire case against the petitioner is that the complainant (Umer Farooq Adam) had given him cheque No.9106901 for investment purposes. It is also alleged that the said cheque was never presented for encashment, therefore, the question of the said cheque getting dishonored did not arise. It is also alleged that the stamps on the said cheque as well as the cheque return memo were fake. The petitioner has been accused of registering a false FIR No.364, dated 05.08.2015, under Section 489-F PPC against the complainant with the malicious motive of harassing him.

9. As mentioned above, FIR No.259/2016 has been registered against the petitioner under Sections 420, 468 and 471 PPC. Two of the said offences are bailable, whereas Section 468 pertains to forgery for the purpose of cheating. The petitioner claims to have filed a complaint before the Manager, Bank Alfalah, F-7 Markaz, Islamabad, for not encashing cheque No.9106901. The petitioner has also filed a complaint against Silk Bank Limited and Bank Alfalah Limited for not encashing cheque No.9106901.

10. The complainant (Umer Farooq Adam) in his petition under Section 22-A and B Cr.P.C. for registration of FIR against the petitioner had pleaded that cheque No.9106901 dated 16.09.2013 for an amount of Rs.15,00,000/- had been given by the complainant to the petitioner for investment purposes. It is also pleaded that later on the complainant transferred an amount

of Rs.15,00,000/- to the petitioner's account on the express understanding that the said cheque would be returned. Now, it remains to be proved in the proceedings before the learned Trial Court as to whether the petitioner was under an obligation to return cheque No.9106901 to the complainant. The complainant has not denied giving cheque No.9106901 to the petitioner, but has taken the position that the petitioner was not supposed to encash the cheque, but return the same due to the fact that Rs.15,00,000/- had been transferred directly into the petitioner's account by the complainant.

11. This Court in the case of Umbreen Nasreen Khawaja Vs. Federation of Pakistan (2015 PCrLJ 506), has *inter-alia* held that the High Court can exercise its inherent jurisdiction under Section 561-A Cr.P.C. in three situations; (a) to give effect to any order under the Criminal Procedure Code, 1898, (b) to prevent abuse of the process of any Court, and (c) or otherwise to secure the ends of justice. In the case of Arshad Khan vs. Jahanzeb (2015 PCrLJ 938), it has been held that the object of the inherent powers of the High Court under Section 561-A Cr.P.C. was to do real and substantial justice and to prevent the abuse of the process of the Court. In the case of the State Vs. Asif Ali Zardari (1994 SCMR 798), it has been *inter-alia* held that ordinarily the High Court does not quash proceedings under Section 249-A or 265-K Cr.P.C. which are incidentally of the same nature and in away akin to and correlated with quashment of proceedings as envisaged under Section 561-A Cr.P.C. The same view has been reiterated in the case of Muhammad Khalid Mukhtar Vs. The State (PLD 1997 SC 275), wherein it was also held that the determination of guilt or innocence of an accused depends on the totality of the facts and circumstances revealed during the trial, and an application for quashment of proceedings before such a stage had reached is liable to be rejected. In the case of Asfandyar Vs. Kamran (2016 SCMR 2084), it has been held as follows:-

> *"the remedy under section 561-A, Cr.P.C. is not an alternate or substitute for an express remedy as provided under the law in terms of sections 435 to 439, Cr.P.C. Jurisdiction under section 561-A, Cr.P.C. is neither alternative nor additional in its nature*

and is to be rarely invoked only to secure the end of justice so as to seek redress of grievance for which no other procedure is available"

12. In view of the above, at this stage I am not inclined to quash the FIR for the simple reason that the petitioner has the alternative remedy for seeking the discharge of the case against him from the learned Trial Court. Therefore, W.P. No.2856/2016 is dismissed. However, given the fact and circumstances of the case, especially the registration of FIR No.364, dated 05.08.2015 under Section 489-F PPC by the petitioner against Umer Farooq Adam, I am inclined to confirm the ad-interim pre-arrest bail granted to the petitioner, vide order dated 01.08.2016. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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