Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No.50-B/2014

Muhammad Ashraf versus 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.
	10.02.2014	Mr. Zahid Mehmood Raja, Advocate for petitioner. Mr. Tahir Habib Kiyani, Advocate for complainant. Mr. M. Yousaf Qureshi, Standing Counsel with Sadiq ASI.

Through this petition, the petitioner seeks post arrest bail in case FIR No.332 dated 23.06.2012 under section 489-F PPC registered at Police Station Margalla, Islamabad.

2. As per facts contained in FIR, the complainant required the petitioner to supply 6315 bags of cement for the construction of his house @ Rs.3880/- per bag. In this regard, advance amount of Rs.2400,000/- was paid to petitioner by the complainant. Later on, the petitioner issued a cheque of said amount, which was later on dishonoured. Thereafter, the complainant asked the petitioner to pay back his amount, but he was kept on hollow hopes. Finally, when petitioner refused to pay the same, above FIR was registered by the complainant.

3. Learned counsel for petitioner has argued that cheuqe was issued by the petitioner in connection with some other transaction and not for the business deal as mentioned in the FIR. The real facts have been

concealed by the complainant. There is inordinate delay of about six months in registration of this FIR, which has not been explained. The punishment for the offence specified is only three years, which does not fall within prohibitory clause of section 497 Cr.PC. Further inquiry is required to prove the guilt of accused/petitioner. The petitioner is behind the bars since his arrest and is no more required for further investigation, hence he deserves for grant of bail.

4. Learned Standing Counsel and learned counsel for the complainant have argued that as the petitioner is habitual offender hence he does not deserve for grant of bail. The petitioner has committed similar type of offence against which three FIRs have been registered. In case, the petitioner is granted bail, there is an apprehension of his absconsion. On above grounds, they have opposed this bail application vehemently.

5. Arguments heard, record as well as relevant provisions of law referred perused.

6. I am of the view that legal position with regard to offence u/s 489-F PPC is very clear. The corresponding law provides alternative punishment of fine. If on conclusion of trial, only fine is imposed upon the accused/petitioner instead of three years' punishment, then he cannot be compensated for the detention period.

7. Moreover, this case falls under section 489-F PPC for which punishment provided is three years, which does not fall within prohibition contained under section 497 Cr.PC.

8. The controversy in hand requires further probe into the guilt of the petitioner, which could be resolved through evidence at the trial.

9. In view of my above discussion and keeping in view the apprehension of absconsion of petitioner expressed by learned counsel for the complainant, the accused/petitioner is ordered to be released on bail, subject to furnishing surety in the sum of Rs.500,000/- with PR bonds in the like amount to the satisfaction of learned trial court.

10. Instant bail petition is allowed.

11. The above finding are tentative in nature therefore learned trial court is required not to be influenced by the same.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran