— 5 —

37405-1137621-9 مدعی

0346 5762129

فارم نمبر ۲۴-۵(۱)

ابتدائی اطلاعی رپورٹ ملزم 03360917440

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

ضلع دیر بالا

(دیر سٹی)

تاریخ وقت وقوع 5/4/021 وقت دفتری اوقات کار

(340 38)

رپورٹ	31/5/2021 وقت دفتری اوقات چاکیدگی پرچہ 31/8/021 وقت 12:25
اطلاع دہندہ مستغیث	ملک انتصار ولد ملک عبدالقادر اعوان سکنہ اسلام آباد حال ملک پلازہ دیر بازار
جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	489F/420
فاصلہ تھانہ سے اور سمت	MCB مین چوک بازار دیر بفاصلہ ۱/۲ کلومیٹر جانب شرق شمال از تھانہ
ملزم	غلام مصطفیٰ ولد غلام حیدر سکنہ بھگوال تحصیل ضلع چکوال صوبہ پنجاب
تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بعد ازاں کوائری پرچہ دیا گیا
روانگی کی تاریخ و وقت	بہ سیل ڈاک

تفتیش مندرجہ خانہ نمبر 2 ابتدائی اطلاع نیچے درج کرو۔ بالا کے درخواست متعلق جعلی چیک پر حسب ضابطہ کوائری شیرزادہ ۱۱۲ نے مکمل کر کے پایا گیا کہ درخواست کنندہ کا موقف حقیقت پر مبنی ہے الزام علیہ نے دھوکہ دہی اور فراڈ سے جعلی چیک درخواست کنندہ کو دیا ہے لہذا برخلاف غلام مصطفیٰ ولد غلام حیدر سکنہ بھگوال تحصیل ضلع چکوال صوبہ پنجاب بجرم بالا پرچہ دیا جاتا ہے جملہ انکوائری بمع نقل پرچہ بغرض تفتیش حوالہ شعبہ تفتیش کیجاتی ہے پرچہ گزارش ہے متن درخواست ذیل ہے 31/8/021 AMHC PSDIR بخدمت جناب SHO صاحب تھانہ دیر ملک انتصار ولد عبدالقادر اعوان سکنہ اسلام آباد حال ملک پلازہ دیر بازار موبائل نمبر 03465762129 (سائل) بنام غلام مصطفیٰ ولد غلام حیدر سکنہ بھگوال تحصیل ضلع چکوال فون نمبر 0336-0917440 (مسول الیہ) درخواست برائے قانونی کاروائی برخلاف مسول الیہ جناب عالی! گزارش حسب ذیل ہے سائل ملک انتصار علی ولد ملک عبدالقادر سکنہ حال ملک پلازہ مین بازار دیر میں عرصہ دراز سے اٹل سپلائی کا کاروبار کرتا ہے اور پورے پاکستان میں مختلف جگہوں پر اٹل سپلائی کرتا ہے سائل کے عنوان بالا الزام علیہ کے ساتھ کاروباری تعلقات کی وجہ سے مبلغ تین کروڑ پچاس لاکھ روپیہ نقد دینے جیکی باقاعدہ روبروئے گواہان ایک تحریری معاہدہ بنایا گیا ہے مذکورہ رقم کے بابت مختلف چیکس جاری کئے گئے جن میں سے ایک چیک نمبر 162660697 مورخہ 5/3/2021 کو جو ایک کروڑ روپے کا تھا کو جب MCB بنک مین بازار دیر برانچ میں اپنے اکاؤنٹ نمبر 0074801010000 25 41 میں جمع کیا تو رقم نہ ہونے کی وجہ سے Dishonour ہوا جو سراسر عید قانونی عمل ہے اور جس کے بابت سائل نے ایک تحریری نوٹس بھی الزام علیہ کو بھجوایا لیکن الزام علیہ رقم دینے سے صاف انکاری ہے لہذا الزام علیہ کے خلاف مقدمہ درج کر کے میرے رقم برآمد کی جائے۔ لہذا استدعا ہے کہ الزام علیہ مذکورہ بالا کے خلاف قانونی کاروائی عمل میں لائی جائے سائل ملک انتصار ولد ملک عبدالقادر اعوان سکنہ حال پلازہ دیر بالا موبائل نمبر 03465762129 شناختی کارڈ نمبر 37405-1137621-9 مورخہ 31/5/021 نقل متن درخواست بمطابق اصل ہے۔

(یار الدین) 31/8/021

AMHC PSDIR

0346 5285571

مورخہ 31-May

(b)

37405-1137621-9 مدعی

GP&SD-KPK 335/26-20.02.2020/Form State Jobs/Zimni Form No.6.24

0346 5762129

فارم نمبر ۲۴-۵(۱)

POLICE STATION DIR DISTRICT DIR

ابتدائی اطلاعی رپورٹ

ملزم 0336 0917440

اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۴ مجموعہ ضابطہ فوجداری

دیر شی	ضلع دیر بالا
(340)	تاریخ وقت وقوعہ 5 4/021 وقت دفتری اوقات کار
رپورٹ 31 5/2021 وقت دفتری اوقات	چاکیدگی 31 8/021 وقت 12:25
اطلاع دہندہ مستغیث	ملک انتصار ولد ملک عبدالقادر اعوان سکنہ اسلام آباد حال ملک پلازہ دیر بازار
نسبت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	489 F/420
جائے وقوعہ فاصلہ تھانہ سے اور سمت	MCB مین چوک بازار دیر بفاصلہ ۱/۲ کلومیٹر جانب شرق شمال از تھانہ
نام وسکونت ملزم	غلام مصطفیٰ ولد غلام حیدر سکنہ بھگوال تحصیل ضلع چکوال صوبہ پنجاب
کاروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بعد از انکوائری پرچہ دیا گیا
تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاک

ابتدائی اطلاع نیچے درج کرو۔ [illegible]

[illegible]

31 8/021 (یار الدین) M. Amir PSDir

In The Court Of

NASEER AHMAD

ADDITIONAL SESSIONS JUDGE/IZQ-III DIR UPPER

Ghulam Mustafa ---VS --- State etc

FIR No. 340, Dated 31/07/2021 U/S 489-F/420-PPC of PS Dir City

Serial No. and Date of order of proceedings	Order or other Proceedings with Signature of Judge or Magistrate & that of parties or counsel when necessary
1.	2.
OR 03 12/10/2021	Petitioner/accused through learned counsel Mr. Sajid Abdullah Advocate present. Learned APP for the state and learned counsel for the complainant Ijaz Khan advocate present. Accused/petitioner namely **Ghulam Mustafa** s/o **Ghulam Haidar** r/o **Bagwal Khas, District Chakwal** is seeking his post arrest bail in case FIR No.340 dated 31/07/2021 U/S 489-F/420-PPC of PS Dir City, District Dir Upper. ATTESTED, 14.10.2021 The case described in the First Information Report, succinctly, reveals that the complainant has an oil business in the vicinity and throughout in Pakistan. He has business relations with the accused/petitioner due to which he advanced cash amount of Rs. Three crore and fifty lac rupees (35000000/-) to the accused/petitioner, in the presence of the witnesses and reduced it into writing. For fulfilling the obligations and re-payment of the advanced amount, the accused/petitioner handed over different cheques to the complainant in which a cheque No. 1626606791 on presentation in his account No.00748010100002541 in MCB Dir Branch, found dishonoured due to insufficient balance. A notice was also issued to the accused/petitioner for payment of the same but he denied, hence the present FIR. Learned counsel for the accused/petitioner contended that accused/petitioner has falsely been implicated in the FIR. He submitted that the accused/petitioner has no concern with the

ORDER ---03
Continued

commission of the offence and the complainant has already lodged two FIRs in different police stations of Islamabad with different version. He further submitted that the stories narrated in FIRs of the complainant are self contradictory. He further added that the accused/petitioner has no previous history in such like offences and the offence does not fall within the restrictive clause of Section 497-Cr.PC and bail is a rule and rejection is an exception. He relied on Criminal Petition No.529 of 2021 of Supreme Court of Pakistan dated 14/07/2021 and Criminal Misc: No.2018-B/2020 dated 03/04/2020.

Contrary to this, learned counsel for the complainant contended that the accused/petitioner has handed over fifty (50) numbers of cheques vide agreement deed dated 02/03/2017 for re-payment of the advanced amount and bound down himself for payment of five lac rupees per month. The instant cheque of One crore rupees is also part and parcel of that very agreement which was dishonoured on presentation before MCB Branch Dir Upper. The petitioner has not challenged the validity of that very agreement rather make bald denial which shows his criminal attitude. He further submitted that the accused/petitioner has taken different stance in his petition by alleging in his bail before arrest that he has lost the cheque and in this respect, he has submitted application before the concerned police station of PS Nila district Chakwal vide application No.Nila05/07/2020-2012. He also alleged that the said signed cheque was stolen by the complainant.

ATTESTED
14/10/2021

In The Court Of

NASEER AHMAD

ADDITIONAL SESSIONS JUDGE/IZQ-III DIR UPPER

Ghulam Mustafa ---VS --- State etc

FIR No. 340, Dated 31/07/2021 U/S 489-F/420-PPC of PS Dir City

ORDER ---03
Continued

He further submitted that though the offence does not fall with the restrictive clause of 497 Cr.PC but the stubborn attitude of the accused/petitioner by depriving the complainant from a huge amount makes the case of the complainant one of exceptional circumstance. He relied on **2019 YLR Note 34 Peshawar, 2014 YLR 1253 Peshawar, 2014 MLD 433 Sindh, 2012 MLD 232 Lahore** and **2009 SCMR 174**.

Arguments of the learned counsel for the accused/petitioner already heard while learned counsel for the complainant and learned APP for the state heard today. Record thoroughly perused.

Laconic perusal of the record reveals that the accused/petitioner has nominated for the commission of the offence for depriving the complainant from a huge amount. A numbers of cheques have been handed over to the complainant for fulfillment of obligations of advanced amount with the knowledge of that sufficient amount was not available in his account. The accused/petitioner took a different stance of stealing the cheque by the complainant, makes the case of the complainant exceptional in the circumstances. It does not appeal to the prudent mind that how a person signed a numbers of cheques and thereafter left it un attended. In the present case, the cheque for a huge amount was issued by the accused/petitioner for fulfillment of the obligations in terms of agreements placed on file with the knowledge that sufficient amount is not available in his account to honor the cheque and there was prima facie, the elements of dishonesty on the part of

12/X/2021.

ATTESTED
14.10.2021

In The Court Of

NASEER AHMAD

ADDITIONAL SESSIONS JUDGE/IZQ-III DIR UPPER

Ghulam Mustafa ---VS --- State etc

FIR No. 340, Dated 31/07/2021 U/S 489-F/420-PPC of PS Dir City

the accused/petitioner existed. In the circumstances the material available on the record makes the accused/petitioner, prima facie, connect with the commission of the offence and make his case one of exceptional circumstance.

Besides, the nature of the offence with which the accused/petitioner is charged has become a regular phenomena which on one hand used to defraud the ordinarily peoples and on the other hand is eroding the trust of the people. Apart from, a traumatic and physiological effect of a dishonored cheque can only be felt by the peoples who become victim to it. The esteem judgment relied on by the accused/petitioner is distinguished in the circumstances.

For the reason stated above, I am of the firm opinion that, at present the accused/petitioner is not entitled to the concession of bail if proved otherwise, therefore, his bail petition **Refused**.

Copy of this order is placed on police as well as judicial file.

File of this court, after its necessary completion and compilation, be consigned to record room.

ANNOUNCED
12/10/2021

NASEER AHMAD
AD&SJ/IZQ-III, Dir Upper.

No 2736
Dated of Application 13-10-2021
Name of ... سائل بذریعہ محمد کاشف منشی
Fee 600/
12/
Signature
Date of Preparation 14-10-2021
Date of Delivery 14-10-2021

12/x/2021

14.10.2021

IN THE COURT OF SESSIONS JUDGE, DISTRICT UPPER DIR

Ghulam Mustafa son of Ghulam Haider, resident of Bagwal Khas, District Chakwal, presently confined in District Jail, Upper Dir.

.....*Petitioner/Accused*

VS

The State

.....*Respondent*

CASE FIR NO. 340/21, DATED 31-07-2021, OFFENCE U/S 489-F, 420 PP, P.S DIR CITY, DISTRICT UPPER DIR

PETITION FOR BAIL AFTER ARREST UNDER SECTION 497 Cr.PC

Respectfully Sheweth:-

1. That the petitioner/accused has been falsely implicated in the above mentioned case by the police officials. (Copy of FIR is annexed herewith).

2. That the petitioner / accused filed bail before arrest and the same was entrusted to Court No. II and subsequently Learned ASJ-II dismissed the same vide order dated 25-09-2021. The petitioner / accused was arrested inside the court room, thereafter petitioner / accused filed bail after arrest before the Learned Senior Civil Judge (J)/AIQ, Dir Upper and

the same was also dismissed vide order dated 02-10-2021. (Copies of orders are annexed herewith).

3. That the petitioner / accused seeks bail after arrest on the grounds inter alia:-

GROUNDS:-

a. That the petitioner / accused has no concern whatsoever with the commission of offence, who has been implicated in the instant case with malafie intentions and ulterior motives.

b. That the complainant has already lodged two FIRs bearing FIR No. 594/19, dated 16-12-2019, at P.S Tarnol, Islamabad and FIR No. 223/20, dated 18-05-2020, Offence U/S 489-F PPC, at P.S Kohsar, Islamabad with different versions and now the third version, which makes the case of the petitioner / accused is one of further inquiry and probe.

c. That the complainant of the instant case narrated different stories in three FIRs, which hampers the credibility of the complainant.

d. That the earlier pre-arrest bails were confirmed in the FIRs as mentioned in para supra (b of grounds).

e. That the civil as well as criminal litigations between the petitioner and complainant are pending for adjudication before the different courts at Islamabad.

f. That the complainant with malevolent intent lodged FIRs at Dir Upper just to pressurize the petitioner / accused due to personal grudge.

g. That there is no direct or indirect incriminating evidence against the petitioner / accused.

h. That the alleged offences do not come within the ambit of prohibitory clause and if probe into the guilt of the petitioner / accused which comes within one of the further inquiry case.

i. That the petitioner / accused is previously non-convicted, even otherwise, the petitioner / accused has no any criminal history except between the petitioner and complainant.

j. That the petitioner / accused is behind the bar since his arrest and the investigation has been completed and there is no useful purpose to kept the petitioner / accused behind the bars for indefinite period.

k. That the petitioner is ready to furnish sufficient surety bond for the satisfaction of this Honourable Court, whereas, the petitioner / accused will join investigation, if required.

PRAYER:-

In these circumstances, it is therefore, respectfully prayed that the instant petition may graciously be accepted and the petitioner/accused may kindly be allowed bail after arrest in the above said case, till final decision of the case, in the best interest of justice.

Petitioner/Accused

Through

CH. SAJID ABDULLAH SRAA
Advocate High Court

Certificate:-

As per information received by the petitioner that this is the First bail petition after arrest is being moved by the petitioner himself before this Honourable Court and no other bail petition is pending before any other court including High Court and August Supreme Court of Pakistan.

Counsel

IN THE COURT OF AKBAR ALI MOHAMAND SENIOR CIVIL JUDGE (J)/ AIQ, DIR UPPER

****

FIR No. 340 dated 31/07/2021 under sections 489-F/420 PPC of police station Dir City

Order 05
02/10/2021

APP for the State present. Accused/ petitioner Ghulam Mustafa s/o Ghulam Haider through Counsel Mian Ahmad Jamil Advocate present. Complainant Malik Imtiaz Intisar s/o Abdul Qadeer Awan through counsel Ijaz Khan Advocate present. Record has already been received.

Accused/ petitioner Ghulam Mustafa seeks his post arrest bail in case FIR# 340 dated 31/07/2021 under sections 489 F/420 PPC of police station Dir City.

Arguments heard and file perused.

Tentatively, allegations against accused/ petitioner are: that he issued cheque No. 1626606971 dated 05/03/2021 amounting to Rs. 10 million to complainant towards repayment of loan/outstanding amount which was dishonored by concerned bank for insufficient balance when presented for encashment. Accused/petitioner is directly named in FIR for commission of offence. Cheque in question has been dishonored by concerned bank on presentation for encashment. Sufficient incriminating material is available on

ATTESTED
13-10-21

Akbar Ali Mohmand
Senior Civil Judge (Judicial)/JM
Dir Upper

case file connecting accused/petitioner with commission of offence thus he is not entitled for concession of bail.

In view of the above, application of accused/petitioner for post arrest bail stands rejected. Copy of this Order be placed on Police File. Requisitioned record be returned forthwith while file of this court be consigned to Record Room after necessary completion.

ANNOUNCED
02/10/2021

AKBR ALI MOHMAND
Senior Civil Judge (J)/ AIQ
Dir Upper

Akbar Ali Mohmand
Senior Civil Judge (Judicial)/JM/AIQ
Dir Upper

ATTESTED
13-10-21

No 27221
Dated of Application 13-10-21
Name of Applicant محمد کاشف
Word 900
Fee 18/
Signature of Copy
Date of Preparation 13-10-21
Date of Delivery 13-10-21

بعدالت جناب سینئر سول جج صاحب/جوڈیشل مجسٹریٹ دیر بالا

غلام مطفیٰ ولد غلام حیدر سکنہ بگوال تحصیل اینڈ ڈسٹرکٹ چکوال ۔۔۔۔۔۔(سائیل/ملزم)

بنام

سرکار

2۔ ملک امتیاز انتصار ولد عبدالقدیر اعوان سکنہ سٹریٹ نمبر 5 محلہ چوہدریان نئی آبادی اسلام آباد۔(مستغیث)

COURT OF DISTRICT & SESSIONS JUDGE

مقدمہ علت نمبر 340 مورخہ: 31/07/2021

جرم 420-F 489 PPC تھانہ دیر سٹی ۔

درخواست بمراد صدور حکم رہائی سائیل/ملزم بر حاضر ضمانت تا تصفیہ مقدمہ۔

27.5.21

جناب عالی! گزارش حسب ذیل ہے۔

1۔ یہ کہ مقدمہ عنوان صدر میں مقامی پولیس نے سائیل/ملزم کو سازشی طور پر گرفتار کر کے بند بہ جوڈیشل حوالات ہے۔(نقل FIR لف ہے)۔

ATTESTED

2۔ یہ کہ سائیل/ملزم بوجوہات ذیل ضمانت پر رہائی کا خواستگار ہے۔

i۔ یہ کہ سائیل/ملزم نا کردہ جرم و بے گناہ ہے۔

ii۔ یہ کہ سائیل/ملزم کے خلاف صفحہ مثل پر کوئی غیر جانبدار اور لاتعلق شہادت موجود نہ ہے۔

iii۔ یہ کہ سائیل/ملزم کو بدنیتی سے ملوث مقدمہ کیا گیا ہے۔

iv۔ یہ کہ مستغیث نے ملزم حاضرہ کے خلاف دو FIR پہلے سے درج رجسٹرڈ کی ہیں۔

v۔ یہ کہ سائیل/ملزم کی ملزمیت مزید تحقیقات طلب ہے۔

vi۔ یہ کہ سائیل/ملزم کے خلاف بالکل جھوٹی دعویداری کی گئی ہے۔

vii۔ یہ کہ سائیل/ملزم سے کوئی ریکوری نہیں ہوئی ہے اور نہ ہی سائیل/ملزم نے اقبال جرم کیا ہے۔

viii۔ یہ کہ سائیل/ملزم پہلے سے سزا فتانہ ہے۔ نیز سائیل/ملزم کے روپوش ہونے کا کوئی امکان موجود نہیں ہے۔

ix۔ یہ کہ دفعہ عائد کردہ 497 ض ف کے ممنوعہ شق میں نہیں آتا۔

x۔ یہ کہ سائیل/ملزم کے خلاف کافی تاخیر سے بعد از صلاح و مشورہ جھوٹی دعویداری کی گئی ہے۔

xi۔ یہ کہ سائیل/ملزم عدالت حضور کی تسلی کیلئے ہر قسم سنگین ضمانت دینے کو تیار ہے۔

xii۔ یہ کہ دیگر نکات بدوران بحث بہ اجازت عدالت حضور اُٹھائی جائیگی۔

بخالات بالا استدعا ہے کہ سائیل/ملزم کو تا تصفیہ مقدمہ حاضر ضمانت پر رہا کرنے کا حکم صادر فرمایا جائے۔

سائیل/ملزم مورخہ: 27/09/2021

بذریعہ وکیل خود میاں رحیم ایڈووکیٹ

سرٹیفکیٹ

تصدیق کی جاتی ہے کہ موکل ام کے ہدایت کے مطابق ہمچوں قسم کی درخواست کسی بھی مجاز عدالت میں زیر سماعت نہ ہے۔

BBA No 791/21

— 18 —

IN THE COURT OF
MAHJAEBEEN SHABBIR
ADDITIONAL SESSIONS JUDGE-II DIR UPPER

GHULAM MUSTAFA .....VS..... THE STATE

FIR # 340 dated 31/08/2021 U/S 489-F/420 PS Dir.

Serial No. and Date of order of proceedings	Order or other Proceedings with Signature of Judge or Magistrate & that of parties or counsel when necessary.
1.	2.

OR 07
25.09.2021

COURT OF DISTRICT & SESSIONS JUDGE DIR UPPER

1. Learned APP for the state present. Petitioners/accused on ad-interim bail alongwith his learned counsel Mr. Ch: Sajid Abdullah SRAA Advocate present. None present for complainant.

2. The accused/petitioner namely **Ghulam Mustafa son of Ghulam Haider R/O Bagwal Khas, District Chakwal** is seeking confirmation of pre-arrest bail in case **FIR No. 340 dated 31.08.2021 U/S 489-F/420-PPC PS Dir.**

3. Arguments of learned counsel for petitioner/accused heard while arguments of learned counsel for complainant Mr. Saleem Ur Rehman Advocate heard on 23-09-2021. Record carefully scaned.

25.09.21

4. Perusal of record would reveal that in order to qualify for pre-arrest bail, the accused has to show malafide and ulterior motive on the part of the complainant/prosecution for bringing false charge and implication against him. During the course of arguments, none of the above ingredients were pointed out from the record. The relief solicited in the instant petition is an extra-ordinary relief to

ORDER —07
Continued

be granted in extra-ordinary exceptional circumstances and that power can only be exercised when either arrest being for ulterior motive such as humiliation, un-justified harassment or prosecution motivated to cause irreparable injury to reputation of the accused or when accused has been falsely implicated, which elements are not available in the instant case. Reliance has been placed upon the judgment of the worthy superior courts:-

2001-CLC-153

Pre-arrest bail may be granted where accused can show that case against him was cropped up due to political wire-pulling; that his arrest was tainted with mala-fide and ulterior motives such as humiliation and unjustified harassment at the hands of police with intention to cause irreparable injury to his reputation and liberty.

2000-PCrLJ 284

Prosecution case prompted by ulterior motive or actuated by bad faith alone is not sufficient while seeking pre-arrest bail, but the explanation of the accused as to his innocence should be plausible and should appeal to reason.

ATTESTED
13-10-21

5. The purpose of law of pre-arrest bail is to protect liberty and reputation of citizens , particularly, in a case where facts and circumstances are full of suspicion. However, anticipatory bail cannot be used as a substitute or as an alternative for post-arrest bail. There is marked distinction between the two and consideration of both are

ORDER —07
Continued

on different footings. Bail before arrest is meant to protect the innocent citizens, if they are found to have been involved with mala-fide intention and ulterior motives while these considerations are lacking in the present case.

It is observed by the Supreme Court that in order to make out a case of anticipatory bail the following conditions are to be satisfied:-

i. *Arrest being for ulterior motives such as humiliation and unjustified harassment;*
ii. *Prosecution motivated to cause irreparable injury to reputation and liberty; and*
iii. *Motive of police consideration. Arrest for ulterior motives such as humiliation and unjustified harassment is valid consideration for grant of pre-arrest bail.*
iv. *Heinousness of offence by itself is not sufficient for refusal of bail and bail is not to be withheld as punishment. No moral or legal compulsion exist to keep a person in jail where investigation stands completed and investigation showing accused not to have committed the offence.*
v. *Pre-arrest bail is meant to protect an innocent citizen if there is doubt that the motive for his involvement is not pure.*

25.09.21

ATTESTED
13-10-21

6. Moreover, the accused/petitioner is required to local police for further investigation. Therefore, the accused/petitioner is not entitled to extra-ordinary concession of confirmation of ad-interim pre-arrest bail.

7. Resultantly, application in hand is rejected and ad-

BBA 791/LV
2021

IN THE COURT OF
MAHJAEBEEN SHABBIR
ADDITIONAL SESSIONS JUDGE-II DIR UPPER

— 21 —

GHULAM MUSTAFA .....VS..... THE STATE

FIR # 340 dated 31/08/2021 U/S 489-F/420 PS Dir.

ORDER —07
Continued

interim pre-arrest bail granted in favour of accused/petitioner is hereby, recalled.

8. Accused/petitioner is left at liberty to withdraw cash security Rs. 1,00,000/- deposited on 11-09-2021 with Assistant Accountant, Sessions Court Dir Upper.

9. Copy of this order be placed on police as well as judicial file. Record be returned. File of this court, after its necessary completion and compilation, be consigned to record room.

ANNOUNCED
25.09.2021

MAHJABEEN SHABBIR
Additional Sessions Judge-II
Dir Upper

ATTESTED
13-10-21

No. 2720
Dated of Application 13-10-21
Name of Applicant
Word 600
Fee 12/-
Signature of
Date of Preparation 13-10-21
Date of Delivery 13-10-21

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Cr. Misc./B. No. 760 /2020

Ghulam Mustafa son of Ghulam Haider, resident of Bhagwal, Post Office Khas, Tehsil and District Chakwal.

...Petitioner

Versus

1. The State

2. Malik Intisar Ali son of Malik Abdul Qadar, resident of Chakri, Tehsil and District Rawalpindi.

Respondents

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Case FIR No.594/19 dated 16.12.2019,
Offence U/S: 489-F PPC
P.S. TARNOL, Islamabad

10 JUL 2020

Examiner
Islamabad High Court
Islamabad

PETITION FOR BAIL BEFORE ARREST U/S 498 Cr.P.C

Note: That the petitioner/accused earlier filed a petition for bail before arrest in the Court of Sessions Judge, Islamabad (West), which was dismissed vide order dated 08.06.2020 passed by the learned Additional Sessions Judge, Islamabad (West). Copy of order is annexed as **Annexure "A"** along with grounds.

Respectfully Sheweth:-

1. That the instant FIR is registered against the petitioner at the instance of complainant Malik Intisar Ali (respondent No.2). A copy of the FIR is attached as **Annexure 'B'**.

2. That the false allegations have been leveled against the petitioner and the petitioner does not have any concern with the said offence, whereas that signed cheque book was stolen by the complainant from the Petrol Pump situated at Chakwal and the Rupt for missing of the cheque book has already been registered.

HCJD/C-121

ORDER SHEET

— 23 —

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No. 760-B of 2020.

Ghulam Mustafa.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.

07.07.2020. Ch. Sajid Abdullah Sraa, Advocate alongwith petitioner.
Mr Intzar Ahmed, Advocate for the complainant.
Mr Muhammad Saeed Khan, State Counsel.
Mr Ghous, ASI with record.

The petitioner Ghulam Mustafa son of Ghulam Haider has sought pre-arrest bail in case, F.I.R. No. 594, dated 16.12.2019, registered under *section 489-F of Pakistan Penal Code, 1860* (*hereinafter referred to as "**PPC**"*) at Police Station Tarnol, Islamabad.

2. Brief facts as alleged in the FIR are that the complainant had entered into an agreement with the petitioner for purchase of property. An amount of Rs.7.7 million was paid in advance. The petitioner issued a cheque of Rs.7.7 million and on presentation thereof the concerned Bank refused to encash it due to insufficient funds. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case with malafide intention and ulterior motives; the petitioner has no concern whatsoever with the alleged offence; the complainant has stolen the signed cheque book and a rapt was lodged by the petitioner; story as narrated in the FIR

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is false, frivolous and vexatious; the complainant had business relationship with the petitioner; the impugned cheque was not issued for fulfilment of any obligation; the complainant had also lodged another FIR no.223 of 2020 at Police Station, Kohsar, Islamabad, wherein the complainant had taken a different stance, which shows malafide on part of the complainant; the petitioner has not issued any cheque in favour of the complainant; the petitioner is innocent and has not committed the alleged offence; at the time of registration of the instant case, the petitioner was abroad; there is a delay of more than twenty months in registration of the instant case; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; the petitioner has no criminal record; the instant case has been registered against the petitioner with connivance of the complainant; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the offence is not attracted against the petitioner; the petitioner has been involved in the instant case merely to harass and humiliate him; the petitioner has joined the investigations. The learned counsel has prayed for confirmation of the ad-interim pre-arrest bail already extended to the petitioner vide order, dated 11.06.2020.

4. The learned State Counsel assisted by the learned counsel for the complainant appeared alongwith Ghous A.S.I. They have opposed the grant of bail. It has been contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; the petitioner had received an amount of Rs.7.7 million from the complainant and pursuant thereto had issued cheque; the petitioner had committed fraud upon the complainant; the conduct of the accused brings his case within the exception to the general rule relating to offences which fall

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within the non-prohibitory clause of section 497 Cr.P.C; the cheque has been issued by the petitioner; hence they have prayed for dismissal of the ad-interim pre-arrest bail.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. The offence included in the FIR i.e. section 489-F, PPC is, admittedly of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of *"Zafar Iqbal versus Muhammad Anwar and others"* [2009 SCMR 1488], a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

i) Where there is likelihood of abscondance of the accused;
ii) Where there is apprehension of the accused tampering with the prosecution evidence;
iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
iv) Where the accused is a previous convict.

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Examiner
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Islamabad High Court
Islamabad

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of *"Subhan*

Khan versus The State", reported as [2002 SCMR 1797] and *"Tariq Bashir and five others versus The State"*, reported as [PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of *"Riaz Jafar Natiq versus Muhammad Nadeem Dar and others"*, reported as [2011 SCMR 1708].

8. The occurrence is alleged to have taken place on 03.04.2018 while the criminal case was registered on 16.12.2019 i.e. after delay of more than twenty months. There is nothing on record to verify whether payment was made in advance. The complainant has filed a suit for recovery of the same amount against the petitioner prior to registration of the instant case but has not made any reference to the cheque in the plaint. The complainant had filed another criminal case i.e. FIR no. 223, dated 18.05.2020 against the present petitioner regarding the same matter. The petitioner has denied issuance of the cheque and has also filed a rapt alleging loss of his cheque book. The parties are known to each other and civil dispute is pending before a competent Court. In the facts and circumstances of this case it cannot be ruled out at this stage that the instant criminal case may have been registered to humiliate the petitioner. Whether or not ingredients of section 489-F of PPC are fulfilled needs further probe. The offence falls within the ambit of the non prohibitory clause. The Investigating Officer has conceded that sufficient incriminating material has not been collected during the course of investigations. The petitioner does not have criminal record. There is nothing on record to indicate that there is an apprehension that the petitioner may abscond. The petitioner is not required for affecting recovery. Moreover, incarcerating the petitioner will not be of any benefit to the complainant nor the prosecution. Refusal to confirm pre-arrest ad-

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Islamabad High Court
Islamabad

interim bail may cause harassment and humiliation to the petitioner in the circumstances. The petitioner has joined the investigations and his arrest would not serve any useful purpose. The complainant has also filed civil suit under Order XXXVII of CPC, which is pending adjudication before the learned trial court.

9. It has been aptly observed by the august Supreme Court in the case of *"Manzoor and 04 others versus The State"* reported as [PLD 1972 S.C. 81] as follows:

> *"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".*

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Examiner
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Islamabad High Court
Islamabad

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

10. In the circumstances, as mentioned above, this petition is allowed and the ad-interim bail already granted to the petitioner is confirmed, subject to furnishing fresh bail bonds in the sum of Rs.500,000/- (Rupee five hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

Sd

(CHIEF JUSTICE)

Asad K/*

C.T.C

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ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

نمبر:594/19 تھانہ:ترنول ضلع:اسلام آباد تاریخ ووقت وقوعہ 18-4-3 بوقت دن

1	تاریخ ووقت رپورٹ	مورخہ 19-12-16 بوقت:3/50 بجے دن بحوالہ مدنمبر26	6	تھانہ سے روانگی کی تاریخ و وقت	بذریعہ ڈاک
2	نام وسکونت اطلاع دہندہ مستغیث	برتحریری درخواست ازاں انتصار علی ولد عبدا القادر، ساکن چکری تحصیل وضلع راولپنڈی 37405-1137621-9،0346-5762129			
3	مختصر کیفیت جرم (مع دفعہ) ومال اگر کچھ لیا گیا ہو	بجرم 489-F ت پ، چیک تعدادی 1/			
4	جائے وقوعہ وفاصلہ تھانہ سے اور سمت	بحدرقبہ ترنول پنجاب بینک بفاصلہ قریب 1 کلومیٹر بجانب شمال مغرب از تھانہ			
5	کاروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں کچھ توقف ہوا ہو تو اس کی وجہ بیان کی جاوے	بعد SOP مقدمہ درج ہوا۔			

(ابتدائی اطلاع نیچے درج کرو)

دستخط: sick عہدہ:SI

نوٹ:۔اطلاع کے نیچے اطلاع دہندہ کا دستخط یا مہر یا نشان انگوٹھا ہونا چاہیے اور افسر تحریر کنندہ (ابتدائی اطلاع) کے دستخط بطور تصدیق ہونے چاہیے:۔ بخدمت جناب ایس ایس پی آپریشن ضلع اسلام آباد عنوان درخواست برائے اندراج مقدمہ بر خلاف غلام مصطفیٰ ولد غلام حیدر ساکن بھگوال تحصیل وضلع چکوال فون:۔0336-0917440 جناب عالی! گزارش ہے کہ سائل اختصار علی ولد عبدالقادر ساکن چکری روڈ تحصیل وضلع راولپنڈی حال سٹریٹ نمبر5 محلہ چوھدریاں نئی آبادی ترنول اسلام آباد کا رہائشی ہوں۔سائل نے غلام مصطفیٰ کے ساتھ عثمان بھگوال پیٹرولیم کی خریداری کے لئے سودا مبلغ تین کروڑ پچاس لاکھ روپے میں تقریباً ڈھائی زبانی سال قبل طے کیا مبلغ ستر لاکھ ستتر ہزار/7770,000 روپے مختلف اقساط میں رقم دی بعدازاں بقایا رقم وصول کرنے اور تحریری اگریمنٹ کرنے اور پیٹرول پمپ حوالے کرنے کا کہا جو الزام علیہ عنوان بالا نے کہا کہ پیٹرول پمپ میں میرے دوسرے بھائی حصہ دار ہیں اگریمنٹ کرنے سے پہلے میں خود اپنے بھائیوں سے پاور آف اٹارنی حاصل کروں گا اور کچھ وقت مانگا کچھ عرصہ بعد رابطہ کرنے پر الزام علی عنوان بالا نے بہانہ بزی کرتے ہوئے بتایا کہ ابھی بھائیوں کے ساتھ معاملہ چل رہا ہے جلد ہی آپ سے تحریری اگریمنٹ کراونگا اور بقایا رقم بھی وصول کراوں گا بعد میں غائب ہو گیا بڑی مشکل سے تقریباً ایک سال بعد ملاقات ہوئی اور اگریمنٹ کرنے اور پیٹرول پمپ حوالے کرنے کا کہا بالآخر بارہا اصرار کرنے پر الزام علیہ عنوان بالا نے کہا کہ میرے بھائیوں سے معاملات طے ہو رہے ہیں آپ جو رقم وصول کی ہوئی ہے اس کے عوض آپ کو چیک دوں گا الزام علیہ عنوان بالا نے ایک چیک نمبری 16516666214 مسلم کمرشل بینک بھگوال چکوال برانچ کا چیک مبلغ ستتر لاکھ ستر ہزار (7770,000) روپے کا دیا جو اپنے اکاؤنٹ نمبر 5100625461000018 پنجاب بینک برانچ ترنول جمع کرایا جو الزام علیہ عنوان بالا کے اکاؤنٹ میں رقم نہ ہونے پر ڈس آنر ہو گیا الزام علیہ عنوان بالا سے رابطہ کیا اور چیک ڈس آنر کا بتایا جس نے کہا کہ کچھ عرصہ انتظار کریں رقم مجھ سے خرچ ہو گئی ہے جلد ہی بندوبست کر کے رقم اکاؤنٹ میں ڈال دونگا کچھ عرصہ انتظار کرنے کے بعد دوبارہ چیک چیک کیش کرانے کے لئے اپنے اکاؤنٹ پنجاب بینک ترنول میں چیک جمع کرایا چیک دوبارہ 18-4-3 کو ڈس آنر ہو گیا الزام علیہ عنوان بالا سے رابطہ کیا کہ چیک دوبارہ ڈس آنر ہو گیا ہے تو جس نے کہا کہ رقم کا بندوبست نہ ہوا ہے بعد میں بارہا کوشش کے باوجود رابطہ نہ ہوا جناب عالی الزام علیہ عنوان بالا نے فراڈ اور بددیانتی سے رقم حاصل کی اور رقم کے عوض چیک ڈس آنر ہو گیا ایس ایچ او اور تھانہ ترنول کو حکم دیا جائے کہ اس کے خلاف مقدمہ درج کر کے میری رقم واپس دلوائی جائے چیک آنر سلپ کی کاپی لف درخواست ہذا ہے۔العرض دستخط بحروف انگریزی اختصار علی ولد عبدالقادر ساکن چکری تحصیل و ضلع راولپنڈی کاروائی پولیس سائل بالا کی تحریری درخواست مجاز افسران بالا موصول ہوئی جس پر کاروائی عمل میں لاتے ہوئے SOP مرتب ہوئی جو بعد منظوری موصول ہوئی ہے تحریری درخواست حرف بحرف درج بالا ہوئی۔تحریر مضمون درخواست وحالات وواقعات سردست صورت جرم 489F ت پ پائی جا کر ابتدائی اطلاعی رپورٹ ھذا بجرم مذکور مرتب ہوئی جناب SHO علاقہ تھانہ میں ہیں جن کو اطلاع بابت مقدمہ ھذا دی جا رہی ہے۔محرر بعد از تکمیل ریکارڈ بعد تکمیل ریکارڈ نقول ایف آئی آر مجاز افسران کو ارسال کرے میں مصروف تفتیش ہوں۔

عامر عباس SI، تھانہ ترنول اسلام آباد

0346-7244830

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ابتدائی اطلاعی رپورٹ نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

نمبر:223 تھانہ: کوہسار ضلع: اسلام آباد تاریخ ووقت وقوعہ 20-4-8 بوقت دن

1	تاریخ ووقت رپورٹ	مورخہ 20-5-18 بوقت 2/20 بجے دن بحوالہ مدنمبر 20	6	تھانہ سے روانگی کی تاریخ و وقت
2	نام وسکونت اطلاع دہندہ مستغیث	درخواست، ازاں اختصار علی ولد عبدا القادر، ساکن چکری تحصیل و ضلع راولپنڈی 37405-1137621-9،0346-5762129		بذریعہ ڈاک
3	مختصر کیفیت جرم (مع دفعہ) وحال اگر کچھ کھویا گیا ہو	بجرم 489-F ت پ،		
4	جائے وقوعہ وفاصلہ تھانہ سے اور سمت	بحدود قبہ JS بینک بلیو ایریا بفاصلہ قریب 1/2 2 کلومیٹر بجانب مغرب		
5	کاروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں کچھ توقف ہوا ہو تو اس کی وجہ بیان کی جاوے	حسب آمد تحریری درکواست مارک شدہ افسران بالا مقدمہ درج رجسٹر ہوا۔		

دستخط: شہزاد رفیق عہدہ: ASI

(ابتدائی اطلاع نیچے درج کرو)

نوٹ:۔اطلاع کے نیچے اطلاع دہندہ کا دستخط یا مہر یا نشان انگوٹھا ہونا چاہیے اور افسر تحریر کنندہ (ابتدائی اطلاع) کے دستخط بطور تصدیق ہونے چاہیے:۔ بخدمت جناب ایس ایس پی آپریشن ضلع اسلام آباد عنوان درخواست برائے اندراج مقدمہ بر خلاف غلام مصطفیٰ ولد غلام حیدر ساکن بھگوال تحصیل و ضلع چکوال فون:۔0336-0917440 دلوائے جانے رقم واپسی ودادرسی ۔ جناب عالی! گزارش ہے کہ سائل ملک اختصار علی ولد ملک عبدالقادر ساکن چکری روڈ تحصیل و ضلع راولپنڈی حال سٹریٹ نمبر 5 محلہ چوھدریاں نئی آبادی ترنول اسلام آباد کا رہائشی ہوں ۔عنوان بالا الزام علیہ کے ساتھ کاروباری تعلقات تھے جس نے کہا کہ میرے کاروباری معاملات ٹھیک نہ ہیں مجھے رقم چاہیے جو ذاتی اور کاروباری تعلقات کی وجہ سے مبلغ تین کروڑ پچاس لاکھ روپے نقد دیئے جس کی باقاعدہ روبرو گواہان ایک تحریر بنائی اور رقم ادائیگی سلسلہ میں چیک MCB بھگوال برانچ چکوال کے دیئے چیک نمبری بالترتیب،1632061210 مبلغ پانچ لاکھ روپے ۲۔1632061209 مبلغ پانچ لاکھ روپے ۳۔1632061211 مبلغ پانچ لاکھ روپے ۴۔1632061203 مبلغ پانچ لاکھ روپے ۵۔1632061204 مبلغ پانچ لاکھ روپے ۶۔1632061208 مبلغ پانچ لاکھ روپے ۷۔1632061213 مبلغ پانچ لاکھ روپے ۸۔1632061206 مبلغ پانچ لاکھ روپے ۹۔1632061212 مبلغ پانچ لاکھ روپے ۱۰۔1632061213 مبلغ پانچ لاکھ روپے ۱۱۔1632061214 مبلغ پانچ لاکھ روپے ۱۲۔1632061205 مبلغ پانچ لاکھ روپے جو کیش کرانے کے لیئے اکاؤنٹ نمبر BL956200000950401، JS Bank Blue Area Branch Islamabad میں جمع کرائے جو الزام علیہ عنوان بالا کے اکاؤنٹ میں رقم نہ ہونے پر چیکس ڈس آنر ہو گئے الزام علیہ عنوان بالا کے خلاف مقدمہ درج کر کے میری رقم دلائی جائے سائل ملک اختصار علی ولد ملک عبدالقادر ساکن چکری تحصیل و ضلع راولپنڈی حال سٹریٹ نمبر 5 محلہ چوھدریاں نئی آبادی ترنول اسلام آباد شناختی کارڈ نمبر 37405-5762129 کاروائی پولیس سائل بالا کی تحریری درخواست مارک شدہ افسران بالا بذریعہ ڈاک موصول ہوئی جو حرف بحرف درج بالا ہوئی تحریر مضمون درخواست وحالات وواقعات سے سردست صورت جرم 489-F ت پ پائی جا کر رپورٹ ابتدائی اطلاعی بجرم مذکور مرتب ہوئی جناب SHO علاقہ تھانہ میں ہیں جن کو اطلاع بابت مقدمہ ھذا دی جارہی ہے۔محرر بعد از تکمیل ریکارڈ بعد تکمیل ریکارڈ نقول ایف آئی آر مجاز افسران کو ارسال کرے میں مصروف تفتیش ہوں۔

شہزاد رفیق ASI، تھانہ کوہسار اسلام آباد

18-05-2020

0346-5344454

150

Presented by:
Attested to: M. Adman 85
Islamabad for disposal to appear on:.....
before Hon. Her

TAHIR MAHMOOD KHAN
Sessions Judge (West)
Islamabad
04 JUN 2020

—30—

IN THE COURT OF SESSIONS JUDGE (WEST), ISLAMABAD

Ghulam Mustafa son of Ghulam Haider, resident of Bhagwal, Post Office Khas, Tehsil and District Chakwal.

...Petitioner

Versus

The State

...Respondent

195 vu
4-6-20

Case FIR No.223/20 dated 18.05.2020,
Offence U/S: 489-F PPC
P.S. KOHSAR, ISLAMABAD

PETITION FOR BAIL BEFORE ARREST U/S 498 Cr.P.C

Respectfully Sheweth:-

1. That the instant FIR has been lodged on the complaint of one Malik Intisar Ali son of Malik Abdul Qadar. Copy of the FIR is attached as **Annexure 'A'** for kind perusal of this Honourable Court.

2. The petitioner is entitled to bail before arrest on the following grounds amongst others:

GROUNDS:-

a. That the FIR has been registered with ulterior motives and malicious/malafide intentions.

b. That the story narrated in the FIR is false, frivolous, concocted, cryptic and baseless and the petitioner is involved in the case just in order to pressurize, humiliate, blackmail and harassments beyond the reality.

c. That the complainant registered the false case against the petitioner with malafide intentions

L.T.C

Ghulam Mustafa vs. The State,

ORDER 20.07.2020

Present: Mr. Ch. Sajid Abdullah Sraa, counsel with applicant.
Mr. Farman Ullah, SPP for State.
Mr. Intazar Ahmed, counsel alongwith complainant.
Police record available.

.....

1. Applicant Ghulam Mustafa seeks pre-arrest bail in case FIR No.223/20, under section 489-F PPC, Police Station Kohsar, Islamabad.

2. I have read the record and heard arguments of counsel for applicant, complainant as well as learned SPP for State.

3. Admittedly, before registration of FIR notice required under Section 30 of Negotiable Instrument Act, 1881 *(Act of 1881)* was not given by the complainant to applicant which is pre-requisite for registration of FIR under Section 489-F PPC to apprise the applicant of the transaction in which the cheque is issued dishonestly and the obligation is not discharged. I place my reliance on case law **Madawa v. Inspector General of Police, PLD 2013 Lahore 442**, where it is held that, "*3. It is accordingly, directed that the respondents shall in the matter of registration of FIR under section 489-F of PPC satisfy themselves regarding prima facie, disclosure of an offence by the provision of a dishonor slip* ***and a notice under section 30 of the Negotiable Instruments Act 1881 prior to registration of FIR for the said offence.***" Section 30 of the Act of 1881 forms part of statute, a law of Pakistan, of which the court can take judicial notice under Article 112 of the Order 1984. It has been held by the Hon'ble Peshawar High Court in ***Rahat Bibi v. State,* 2006 PCrLJ 1562,** that the general principle of criminal jurisprudence is that **all the statutes shall be interpreted in favour of offender** and **if any discretionary powers are vested in Court same would not be withheld**. Since present are the criminal proceedings against applicant, so, the consideration of section 30 of the Act of 1881 is liable to be read and interpreted in his favour, when admittedly no such notice is given by complainant to

accused. Thus, it can be observed that the registration of FIR was without following the pre-requisite of Section 30 of the Act of 1881.

4. Offence under section 489-F PPC is prefixed with the specific term **'dishonestly'** which is defined under **section 24 PPC** where one party having suffered wrongful loss as against the second party having intention of gaining wrongfully. **Wrongful loss and wrongful gain** are defined under **section 23 PPC** which requires shouldering the burden by the complainant by **affirmative conclusive evidence** that he was **legally entitled** to the amount. Thus the requirement of section 23 PPC is that the prosecution has to prove upto hilt that the complainant lost wrongfully. **Article 129 (c) of Qanun-e-Shahadat Order, 1984** provides discretion of court in presuming that cheques were accepted for good consideration. But the same is discretionary. Does not absolve the complainant/prosecution from producing proof of transaction of payment for the discharge of which the complainant has failed to produce any evidence that at any point of time he had a huge amount of PKR.3,50,00,000/- on or about 2nd March, 2017 on which date the agreement is executed between the parties. These are relevant evidence fall within the ambit of its legally entitlement of the amount which the complainant claimed wrongfully lost under section 24 readwith 23 PPC to fulfill precondition of constitution of offence under Section 489F PPC. Counsel for the complainant contended that there is admission of accused of having issued the cheques under agreement dated 02.03.2017. **The admission of accused may estop him under Article 114 of Q-Sh Order but is not a conclusive proof of fact under article 45 of Q.Sh Order.** Needless to say that mere dishonouring of cheques is not an offence which may give rise to a civil action. In civil proceedings entire evidence is assessed on the principle of balance of probability to determine an issue where burden of a party can be seen shifting; whereas, in criminal proceedings, entire burden is on prosecution to prove the case upto the hilt to

C.J.C.

bring home the guilt of the accused. But converting a civil action into a criminal prosecution is no less than to achieve some nefarious designs/ mala fide / ulterior motives.

5. Moreover in para 8 order of Hon'ble Islamabad High Court Islamabad in Crl. Misc. No. 760-B of 2020 "Ghulam Mustafa versus The State etc dated 07.07.2020:-

> *"8. The occurrence is alleged to have taken place on 03.04.2018 while the criminal case was registered on 16.12.2019 i.e. after delay of more than twenty months. **There is nothing on record to verify whether payment was made in advance.** The complainant has filed a suit for recovery of the same amount against the petitioner prior to registration of the instant case but has not made any reference to the cheque in the plaint. **The complainant had filed another criminal case i.e. FIR No.223, dated 18.05.2020 against the present petitioner regarding the same matter.** The petitioner has denied issuance of the cheque and has also filed a report alleging loss of his cheque book. The parties are known to each other and civil dispute is pending before a competent court. In the facts and circumstances of this case it cannot be ruled out at this stage that the instant criminal case may have been registered to humiliate the petitioner. Whether or not ingredients of section 489-F of PPC are fulfilled needs further probe. The offence falls within the ambit of the non-prohibitory clause. The Investigating Officer has conceded that sufficient incriminating material has not been collected during the course of investigations. **The petitioner does not have criminal record.** There is nothing on record to indicate that there is an apprehension that the petitioner may abscond. The petitioner is not required for effecting recovery. Moreover, incarcerating the petitioner will not be of any benefit to the complainant nor the prosecution. Refusal to confirm pre-arrest ad-interim bail may cause harassment and humiliation to the petitioner in the circumstances. The petitioner has joined the investigations and his arrest would not serve any useful purpose. The complainant has also filed civil suit under Order XXXVII of CPC, which is pending adjudication before the learned trial Court."[emphasis are supplied]*

6. With this above series of litigation civil and criminal, it cannot be ruled out that the registration of the FIR by complainant is with malafide intention. In the case of **Sarwar v. State, 2014 SCMR 1762 *(LB Five Members)***, in para-27, it is held, "*.....It had not been appreciated in the cases of Noor Nabi and Luqman Ali that even in cases of the most heinous offences the **police**, not to speak of a court, **is under no statutory obligation to necessarily and straightaway arrest an accused person during an investigation as long as he is joining the investigation and is cooperating with the same...***". And here there is no

complain of I.O. that the applicant did not join and/or cooperating in the investigation.

7. Admission of an accused on bail before arrest or otherwise does not mean that he is not in custody. In fact in accordance with law, his surety is responsible for his custody. The punishment of the offence does not fall within the prohibitory clause, where bail is rule and its refusal is an exception. The case of prosecution is of further inquiry. Police failed to make out a case of necessary arrest without warrants of accused for the purposes of investigation without which it cannot complete the same save having their ulterior motives. Conversely the applicant has made out the case where his arrest would cause irreparable humiliation and disgrace and dishonour to him, thus, may prejudice his reputation in the society.

8. In **Khalil Ahmed Soomro etc. v. State, PLD 2017 SC 730,** it is held by **Full Bench** of the **Honorable Supreme Court** that:-

> *"4. On merits we have found that all offences of the above nature are punishable by way of imprisonment which do not fall within the prohibitory part of section 497 Cr.P.C. and when the petitioners are entitled to post arrest bail thus, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone while on the other hand they are likely to be humiliated and disgraced due to arrest at the hands of the local police." [Emphasis are supplied]*

9. For above reasons, ad-interim pre-arrest bail earlier granted to the applicant is hereby confirmed subject to his furnishing fresh local surety in the sum of PKR.1,00,000/- (*Rupees One Hundred Thousands*) and PR bonds in the like amount to the satisfaction of the learned Area Magistrate alongwith certified copy of this order within seven (7) days.

10. Needless to state that my above observations are tentative in nature and are not to influence the case of either party at the trial or investigation on merits before the competent authorities. Police record is returned back. File be consigned.

ADDL. DISTRICT & SESSIONS JUDGE
ISLAMABAD

Information & compliance copy

Recalled to
Addl. Sessions Judge
Isbad

Malik Intesar Ali Awan Vs Ghulam Mustafa etc

03.12.2019

Present: Learned counsel for the parties.

ORDER

From the divergent pleadings of the parties, the following issues are hereby framed:-

ISSUES

1. Whether the defendant No.1: Ghulam Mustafa barrowed an amount of Rs.35,000,000/- from the plaintiff and in this regard executed an agreement dated 02.03.2017 ? OPP
2. Whether the defendant No.1 for the return of above said amount issued 46 cross postdated cheques to plaintiff which were subsequently dishonoured ? OPP
3. Whether the defendant No.2 Babar Saeed stood guarantor on behalf of plaintiff No.1 for the payment of suit amount to the plaintiff ? OPP
4. Whether the plaintiff is entitled for decree against defendant No.2 ? OPP
5. Whether the suit of the plaintiff is not maintainable against defendant No.2 ? OPD 2
6. Whether the plaintiff got no cause of action to file this suit ? OPD 2
7. Relief

List of witnesses alongwith certificate of readiness to produce evidence be submitted within seven days. Now to come up for plaintiff's evidence on 09.01.2020.

Announced
03.12.2019

(Muhammad Ali Warraich)
Addl. District Judge-IV,
Islamabad (West).

Presented By:
Interested to
Islamabad for disposal. To appear on
Before him
09 NOV 201

-36-

SOHAIL NASIR
District Judge (West)
Islamabad
08 NOV 2018

BEFORE THE DISTRICT JUDGE, ISLAMABAD

Malik Intesar Ali Awan S/o Malik Abdul Qadir Awan R/o Street No.5, Mohallah Chaudhrian, Nai Abadi, Tarnol, Islamabad.

.....Plaintiff

Versus

1. Ghulam Mustafa S/o Ghulam Haider R/o Bhaghwal, P.O Khas, Tehsil & District Chakwal.
2. Babar Saeed S/o Ahmed Khan R/o P.O Bhaghwal, Tehsil & District Chakwal

.....Defendants

SUIT FOR RECOVERY OF RS.3,50,00,000/- ALONGWITH FINE FOR LATE PAYMENT OF MONTHLY INSTALLMENT AT THE RATE OF RS.17000/- PER DAY SINCE 01-04-2017 TILL THE REALIZATION OF WHOLE BORROWED AMOUNT AS PER THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT DATED 03-03-2017 U/O 37 CPC.

The plaintiff respectfully submits:-

That the addresses of the defendants are correct for the purposes of their service.

1. That the defendant No.1 is running and dealing his business in different projects i.e having a showroom selling Tractors and agriculture machinery (ii) running petrol pump with name and style Usman Bhaghwal Petroliam Chakwal and (iii) building

constructions work in UAE with the name and style of Dubai Construction Works.

2. That the plaintiff is also doing his business under the name and style of One Moon Five Star Oil Traders at Chakwal and Islamabad and therefore he had good business terms and relations with the defendant No.1 as he purchase his required selected items from the plaintiff since long therefore plaintiff had developed a great confidence, belief and trust upon the defendant No.1 being a good businessman in his business dealings and matters as the plaintiff supplied the different items to the defendant No.1 on debit and credit basis.

3. That in the month of February 2017 the defendant No.1 had requested the plaintiff to lend him Rs.350,00,000/- as he is facing some financial problems and crises in his business dealings and promised that the amount aforesaid shall be returned to the plaintiff in easy monthly installments.

4. That the plaintiff had since a good business relations with the defendant therefore he accepted the request of defendant No.1 and on 03-03-2017 plaintiff paid an amount of Rs.350,00,000/- in cash on loan at Islamabad to the defendant No.1 through

agreement on the terms and conditions as laid down on a stamp paper No.4896 purchased by the defendant No.1 on 02-03-2017, wherein he acknowledged the receipt of an amount of Rs.350,00,000/-. Photocopy of the agreement is attached herewith.

5. That the defendant No.1 in lieu of receipt of Rs.350,00,000/- as borrowed money, gave to the plaintiff the following 46 crossed post dated cheques, for its repayment bearing Nos. 1632061170 to 1632061215 of MCB Bhaghwal Branch Chakwal, Tehsil & District Chakwal each valuing Rs.5,00,000/- total valuing of Rs.250,00,000/- alongwith 4 other cheques and also promised to pay back the remaining Rs.1,00,00,000/- till 05-05-2021 and also handed over a post dated crossed cheque No. 1626506971 dated 02-05-2021 of MCB Bhaghwal Branch Chakwal to the plaintiff for its encashment on due date.

6. That it was decided between the plaintiff and defendant No.1 that the plaintiff shall represent the each cheque of valuing Rs.5,00,000/- before the bank for its encashment on monthly basis from April 2017.

09/11/2018

7. That as per the terms and conditions of the loan agreement dated 03-03-2017 it was also

mutually settled between the plaintiff and defendant No.1 that in case any cheque out of the afore detailed cheques if dishonored and returned un cashed to the plaintiff, the plaintiff had right and claim to recover the remaining amount in lump sum from the defendant No.1.

8. That the defendant No.2 Babar Saeed S/o Ahmed Khan took the liability as guarantor on behalf of the defendant No.1 for the return of the borrowed amount to the plaintiff and bound himself that if the defendant No.1 remained failed in payment of the borrowed amount then he being a guarantor is also liable to pay the remaining amount to the plaintiff. The agreement aforesaid was signed by the parties to the suit in presence of the witnesses who had also signed the same.

9. That the borrowed amount was liable to be paid on monthly installment basis at the rate of Rs.5,00,000/- per month for which the defendant No.1 had already handed over the post dated crossed cheques to the plaintiff and the recovery was to be started from April 2017.

FILE
ADDED
09/11/2018

10. That on 02-04-2018 the plaintiff had presented cheque No.1632061171 to 1632061175 each valuing of Rs.5,00,000/- for encashment regarding the recovery of

monthly installments of borrowed money which were returned to the plaintiff on 03-04-2018 by the MCB Bhaghwal branch Chakwal for the reason of insufficient funds. Photocopies of cheques and return memo slips are attached.

11. That thereafter the plaintiff on 18-04-2018 had presented cheque No.1632061177 to 1632061180 each valuing of Rs.5,00,000/- for encashment regarding the recovery of monthly installments of borrowed money which were returned to the plaintiff on 30-04-2018 by the MCB Bhaghwal branch Chakwal for the reason of insufficient funds. Photocopies of cheques and return memo slips are attached.

12. That the plaintiff on 18-09-2018 had also presented cheque No.1632061183 to 1632061190 each valuing of Rs.5,00,000/- for encashment regarding the recovery of monthly installments of borrowed money which were returned to the plaintiff on 19-09-2018 by the MCB Bhaghwal branch Chakwal for the reason of insufficient funds. Photocopies of cheques and return memo slips are attached.

09/11/2018

13. That due to the insufficient funds in the account of defendant No.1, the cheques afore detailed have been dishonored by the MCB

Bhaghwal Branch Chakwal and the defendant No.1 had failed to pay even a single penny of the borrowed money to the plaintiff therefore the plaintiff had asked the defendant No.1 to return the whole borrowed money to the plaintiff as per the terms and conditions of the loan agreement dated 03-03-2017 alongwith the fine at the rate of Rs.17,000/- per day as late payment whereupon he started to linger on the payment of money to the plaintiff on one pretext or other which proves the malafide of the defendant No.1 to cheat and play fraud with the plaintiff with criminal intention to deprive him from the money.

14. That the plaintiff had also asked the defendant No.2 guarantor of the defendant No.1 and also demanded from him to pay the borrowed money as the post dated cross cheques of the defendant No.1 had already been dishonored therefore he is also being guarantor jointly and severely liable to pay the whole borrowed amount alongwith the fine at the rate of Rs.17,000/- per day but the defendant No.2 also using the delaying tactics with malafide intention in collusion with the defendant No.2 for the payment of borrowed money to the plaintiff hence this suit.

FILED
09/11/2018

15. That the cause of action has accrued in favour of the plaintiff and against the defendants firstly on 03-03-2017 secondly on 30-04-2018, thirdly 19-09-2018 when the post dated cross cheques of defendant No.1 were dishonored by the MCB Bhaghwal Branch Chakwal and lastly on 2 days back when both the defendants had flatly refused to pay back the whole borrowed money to the plaintiff and is continuing day by day.

16. That the cause of action had accrued at Islamabad where both the parties had entered and executed the loan agreement dated 03-03-2017 therefore this Honourable Court had jurisdiction to entertain and adjudicate upon the matter.

17. That the maximum prescribed court fee of Rs.3000/- had also been affixed on the plaint.

PRAYER

In the circumstances, it is, therefore, most respectfully prayed, that the suit of the plaintiff for recovery of Rs.350,00,000/- alongwith fine for late payment of monthly installments at the rate of Rs.17,000/- per day since 01-04-2017 as per the terms and conditions of

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& SJ
09/11/2018

loan agreement dated 03-03-2017 till the realization of whole borrowed money be decreed in favour of the plaintiff and against the defendants jointly and severely with cost.

Any other relief, which this Honourable Court deems fit just and proper, may also be awarded.

Islamabad
Dated: 08-11-2018

.....Plaintiff

Through:

RAJA FAISAL GHANI JANJUA
Advocate High Court
Rawalpindi

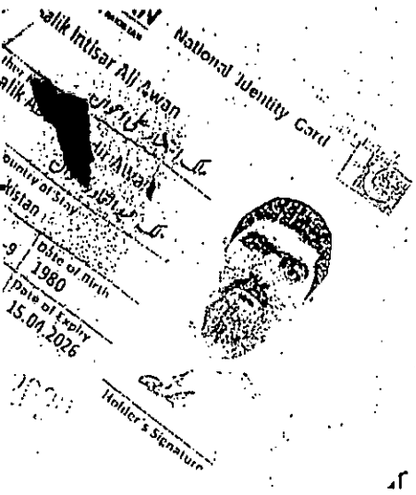
AZIZ AHMED
Advocate High Court
Rawalpindi

VERIFICATION:

Verified on oath on this 08 day of November 2018 that the contents of paras No. 1 to 14 of the plaint are true and correct to the best of my knowledge and belief and rest of the paras are believed to be correct.

.....Plaintiff

FILE
ADJ & SJ
09/11/2018



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Presented By:
Entrusted to:
Islamabad for disposal, To appear on:
Before him/Her
20 JAN 2020
TAHIR MAHMOOD
District Judge (West)

OF LEARNED DISTRICT AND SESSIONS JUDGE, ISLAMABAD (WEST).

20 JAN 2020

...r Ali Awan S/O Malik Abdul Ghaffar Awan, R/O Street No. 5, Chadurian, Nai Abadi, Tarnool, Islamabad.

.....Plaintiff

Versus

...ulam Mustafa S/O Ghulam Haider, R/O Post Office Khas, Tehsil & District Chakwal,

....Defendant

SUIT FOR RECOVERY OF Rs. 50, 000,000/- UNDER ORDER XXXVII RULE 1 & 2 CPC, ALONG WITH PROFIT AT PRESENT BANK RATE

Respectfully Sheweth: -

1. That brief facts leading to file the instant plaint are that being friend, the plaintiff had good relations with the defendant who visited the plaintiff and requested him for loan for his business.

2. That plaintiff in view of good previous relation and trust upon the defendant, arranged the said amount from his friends and handed over the amount i.e. Rs. 50,000,000/- (Fifty Million) to the defendant in cash in the presence of the witnesses.

3. That letter on the plaintiff time and again requested the defendant to return his amount, firstly the defendant lingering on the matter one to another pretext later on he promised to return his amount as early as possible.

4. After failing to return the said amount, the defendant with the view to ensure the return of the amount executed a cheques No. 1632061165 of MCB Bank Chakwal Branch, amounting 50, 000,000/- for 18.04.2018 in favour of the plaintiff in the presence of the witnesses. It was the same time when the receipt of the amount was acknowledged by the defendant and payment by virtue of the cheque was reiterated.

5. That the plaintiff presented the said cheque to his own Bank account at JS Bank, G-15, Branch, Islamabad, which was dishonored on 30.04.2018 .Copy of the cheque, dishonor slip are annexed with this suit for kind perusal of this court.

6. That in the situation mentioned in the above para, many a times the plaintiff requested the defendant to return the said amount but he with mala fide intentions lingered on matter.

7. That the plaintiff has time and again requested the defendant to return the said amount but impliedly he has refused to return the same, hence cause of action accrued. The plaintiff is further entitled for the profit on the amount as per the bank rate, damages caused by the act of the defendant and cost over the litigation till the materialization of the decree of this learned court as under:

Principal amount	= 50000,000
Damages caused on failure of the return of the amount	= 1100,000
Cost	= 300,000
Total amount due	= 5,1400,000

8. That lastly the cause of action occurred a week ago when the defendant flatly refused to accept the lawful demand of the plaintiff and to return the amount outstanding on his part.

FILE
AD&S
14 JAN 2020

9. That the cause of action occurred within jurisdiction of this Honourable Court as such this Honourable court has the jurisdiction to entertain the matter.

C.I.C
Now

10. That the parties reside and the cheque was executed here within the territorial jurisdiction of this learned court hence the suit in hand is being filed here.

11. That the value of the suit for purpose and court fee and jurisdiction is fixed Rs. 514, 000,000/- and proper court fee will be affixed on the plaint as per direction of this Honourable Court.

It is therefore humbly prayed that a decree for recovery of Rs. 5140,00,000/- along with profit at Bank Rate may kindly be passed in favour of the plaintiff against the defendant.

Any other relief which this Honourable Court deems fit and proper may also be awarded.

Plaintiff

Through

GHULAM NABI BALOCH
Advocate High Court,
Islamabad.

VERIFICATION

Verified at Islamabad that the contents of the para No. 1 to 10 are true and correct to the best of my knowledge and belief and rest of the paras are true and correct as per information received.

Plaintiff

FILE
ADDL
JAN 2020

C.T.C