

ORDER SHEET
LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Crl. Misc. No. 25190-B of 2017

Anwaar Masood Khan. Vs. The State, etc.

Sr. No. of order of proceeding	Date of order of proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
1	2	3

14.06.2017 Saad Ullah, Advocate for the petitioner.
Mr. Haroon-ur-Rasheed, D.D.P.P alongwith Asif, SI.

This is an application for post arrest bail on behalf of Anwar Masood Khan, in case FIR No.178/15 dated 21.04.2015, offence under section 489-F PPC, registered at Police Station City Sargodha, District Sargodha.

2. *Precisely stated the case of the prosecution as unfolded from the FIR is that the petitioner, after receiving an amount of Rs.3,21,90,500/- issued 18 cheques of different amounts to the complainant, which on presentation before the concerned Banks, were dishonoured.*

3. ***Arguments heard and record perused.***

4. *It evinces from the narration of facts, incorporated in the crime report that Toqeer Anwar Kazmi (complainant) invested an amount of Rs.3,21,90,500/- with the petitioner. It further spells out from the story mentioned in the FIR that after receiving this amount, the petitioner issued 18 cheques to the complainant on the same day. From above, it reflects that the cheques in question were apparently handed over to the complainant as guarantee.*

5. *The perusal of the record reveals that the instant transaction is also pending adjudication before the District Judge Sargodha, through a civil suit under Order 37 Rule II of CPC. A wade through the stance of the complainant in two cases discloses that the complainant has come forward with fragmented claim. In the instant FIR, his claim is to the extent of an amount of Rs.3,21,90,500/-, whereas in the suit filed under*

Order 37 Rule II of CPC, the recovery of an amount of Rs.2,64,40500/- is sought. I have meticulously gone through the record and have not been able to get any explanation regarding above mentioned abnormality of the claim of the complainant in the cases mentioned above and that too arising out of same transaction.

6. *I have also come across another feature of the case having direct bearing on the result of the instant application for grant of post arrest bail. In the instant case, I have noticed that out of 18 above mentioned cheques, 10 cheques were presented before the bank, beyond the period of six months of their due date. It would be appropriate to make reference to the detail of these cheques which are as under:-*

Sr. No.	Cheque No.	Date	Amount	Memo of return date
1	0043873	01-04-2012	1840100/-	09-03-2015
2	0046059	07-10-2013	1120000/-	09-03-2015
3	A20358307	01-03-2014	675000/-	09-03-2015
4	4892287	01-03-2014	3303750/-	09-03-2015
5	0016200	03-12-2012	2850000/-	09-03-2015
6	0046062	01-07-2013	1000000/-	09-03-2015
7	0016192	08-08-2012	1000000/-	09-03-2015
8	0043871	03-04-2012	2900000/-	09-03-2015
9	0043896	02-08-2013	2360000/-	09-03-2015
10	3202230	01-02-2014	1395000/-	09-03-2015

7. *According to section 84(1) of the Negotiable Instrument Act 1881, the cheque is to be produced for encashment within a reasonable time. Likewise, it is mentioned 84(2) of the same Act that in determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case. A cheque presented for encashment before a bank, beyond period of six months of its*

due date is generally regarded as a stale cheque. While looking for the “usage of trade and of bankers”, within the meaning of section 84(2) of Negotiable Instruments Act, 1881, I have come across following material:-

(i). In Sheldon’s Practice and Law of Banking (10th Edition) it is mentioned that it is necessary to distinguish between cheques termed ‘out of date’ in Law for purposes of negotiation and those termed ‘out of date’ by banker’s custom. As regards the Latter, most bankers return cheques presented six or more months after date, marked “out of date”, and require the drawer’s confirmation before payment”.

(ii). In Banking Laws and practice in India by M.L. Tannan (Fourteen Edition), it is mentioned that “unless a cheque is presented within reasonable time after the ostensible date of its issue, it should not be honoured.

8. *From above, it evinces that a cheque or a negotiable instrument, presented after six months of its due date is generally termed as stale and as per banking practice, the bank is not obliged to honour it unless instructed by the account holder. As a necessary consequences, on such a cheque no legal proceedings can be initiated. While dilating upon the issue of stale of cheque, the learned Single Bench of Sindh High Court in the case of “Habib Bank Limited Vs. Jamilur Rehman” reported as (1994 MLD 271) after expounding upon the subject in detail observed that after the lapse of period of six months, the cheque becomes out of date or stale. Similarly, in the case of “Shafqat Hussain Hashmi Vs. The State” (2012 MLD 1551), wherein learned Judge of Sindh High Court was pleased to quash the proceedings arising out of a case registered under section 489-F PPC, on the basis of a stale cheque.*

9. *It follows from the above discussion that a considerable claim of the complainant is arising out of 10 stale cheques. Such cheques, on tentative assessment of the material do not give rise*

to the proceeding of section 489-F PPC. In my humble view, this feature of the case tends to show that the petitioner is not involved in the commission of offence, hence the provision of section 497(2) Cr.P.C stands attracted.

10. *I have also give profound consideration to the fact that the petitioner is saddled with the responsibility of depriving the complainant from a huge amount of Rs.3,21,90,500/-. This is a settled principle that the concession of bail is a procedural relief having nothing to do with the ultimate fate of the trial. If a person, otherwise is found entitled to the concession of bail, his liberty cannot be curtailed on the ground of the charge being of heavy amount. In this regard, I am enlightened by the observation of the Hon'ble Supreme Court of Pakistan in the case of "Hakim Ali Zardari Vs. The State" PLD 1998 S.C 1) which is as under:-*

"Remedy of bail is an independent relief, not much depending on the ultimate result which may ensue. Such remedy can be availed of even in a case where charge against an accused is of a grave nature involving embezzlement of a huge amount".

11. *Even otherwise, the legislatures have made the offence of 489-F PPC punishable within an imprisonment of 3 years and that too without any distinction to the value of the cheque. Since, the foregoing provision stands enacted without any categorization of quantum of punishment, in relation to the value of the cheque, hence the general principle laid down by the Hon'ble Supreme Court of Pakistan for the grant of bail in such like offences are to be followed. This is a settled law that in such like cases rule is bail and not jail. A deviation from this rule can only be made in exceptional circumstances, which can be summarized as under:-*

- i) if there is an apprehension of abscondence,*
- ii) if there is an apprehension of repetition of offence;*

iii) *if there is an apprehension of tempering with the prosecution evidence.*

12. *For what has been discussed above, the instant petition is allowed and the petitioner is granted post arrest bail subject to furnishing of bail bond to the tune of Rs.2,00,000/- with two sureties in the like amount to the satisfaction of the learned trial court.*

(Ch. Abdul Aziz)
Judge

M. Nadeem

Approved For Reporting.

Judge