

**JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

Cr.M/BA No. 2874-P/2018

**JUDGMENT**

Date of hearing: 14.01.2019

Petitioner: Mian Muhammad Tariq Shah) Gp:- Muhammad Qjaz *1 Khan Sabi. Adnan*

Respondent: Gp:- Mr. Noor Muhammad Khan Adnan. Gp-  
Mujahid Ali - D.A.H.

**WAQAR AHMAD SETH, CJ.-** Petitioner, Mian

Muhammad Tariq Shah son of Muhammad Zahir Shah, seeks his post arrest bail in case FIR No. 502 dated 04.02.2018 under Section 489-F PPC registered at Police Station University Town, Peshawar. He has been refused bail by the learned lower courts; hence, the instant petition for the same purpose.

2. As per contents of F.I.R., the complainant has sold out plot situated at Phandu Bala to the petitioner, who issued cheque No. 0270746 amounting to Rs. 25,998,500/- Bank Alfalah Islamic Jamrud Road Azam Town, Peshawar to the complainant, which on presentation, was dishonoured because of insufficient amount.

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

4. Perusal of the record would reveal that complainant was the owner of 86 marlas landed property situated at Phandu Bala, Phandu Road, Peshawar in respect of which he executed an agreement for its sale with the petitioner. Amount of Rs. 64,240,000/- was fixed as sale consideration, out of which, Rs. 48,00,000/- was paid by the petitioner to the complainant as earnest money and remaining amount was to be paid in different installments. In order to discharge liability of repayment, petitioner has issued cheque amounting to Rs. 5,200,000/- to the complainant but due to non-availability of amount, the same was dishonoured and FIR No. 1795 dated 01.12.2017 was registered against the petitioner in Police Station Faqir Abad, Peshawar. Compromise was effected between the parties and petitioner was released on bail, however, in consequence of compromise, the petitioner issued another cheque amounting to Rs. 58240000/- to the complainant, which on presentation to the bank was dishonoured and in this respect, FIR No. 137 dated 08.02.2018 was registered against the petitioner in Police Station Chamkani, Peshawar. Again compromise was effected

between the parties and petitioner was released on bail but despite the fact, the petitioner has again issued cheque No. 0270746 dated 04.07.2018 amounting to Rs. 25,998,500/- to the complainant, which on presentation to the bank was dishonoured due to insufficient amount and the instant F.I.R. has been registered against him.

5. It may be advantageous to mention here that for to constitute an offence under Section 489-F PPC, the following ingredients have to be there.

- i. Cheque issued with dishonest intention;*
- ii. Towards repayment of a loan or fulfillment of an obligation; and*
- iii. The cheque is dishonoured on presentation.*

6. In the present case, the cheque for a huge amount was issued by the petitioner for fulfillment of obligation in terms of agreement dated 26.03.2018, placed on file, with the knowledge that sufficient amount is not available in his account to honour the cheque and thus there was prima facie the element of dishonesty on the part of petitioner and that the cheque was dishonoured at the bank's counter is now part of the record of the case. Thus, on all fours, the provisions of

Section 489-F PPC are squarely attracted in the present case. Moreover, the complainant cannot be bound down to seek his remedy by approaching the civil court through a recovery suit when there is no legal embargo on him not to press into service the penal provisions against the delinquent through the registration of an FIR.

7. The mere fact that the offence for which the petitioner is charged does not hit the prohibitory clause of section 497 Cr.P.C. cannot per se make him entitled to the concession of bail. Grant of bail in such like cases is not a rule of universal application as each case merits decisions on the basis of its own facts and circumstances. Reliance, in this respect, may advantageously be placed on the cases of *Muhammad Siddique vs. Imtiaz Begum and two others* (2002 SCMR 442) and *Shameel Ahmad vs. The State* (2009 SCMR 174).

8. It may not be out of place to mention here that the issuance of cheques which are in turn dishonoured has taken our society by storm so much so that such instrument is looked upon by the beneficiary with a degree of doubt and skepticism


till it is honoured by the concerned bank. Such practice has also eroded the mutual trust of the general public and there are instances when people shy away from accepting cheques even from trustworthy persons. Moreover, no one is supposed to commit the financial murder of another member of the society.

Even otherwise, it is settled that for deciding the bail application, the court has to observe the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. In this respect, reliance is placed on the cases of

*Saleh Muhammad vs. The State (PLD 1986 SC 211) and The State vs. The Zubair and four others (PLD 1986 SC 163).*

Thus, taking a tentative assessment of the available record, the petitioner being prima facie connected with the commission of offence coupled with the fact that he has also issued another cheque amounting to Rs. 52,00,000/- to the complainant and FIR No. 1795 dated 18.12.2017 under Section 489-F PPC

Police Station Faqir Abad, Peshawar was also lodged

 disentitled him to the concession of bail.

9. Resultantly, the bail petition being without any substance is hereby dismissed.

**Announced.**  
**14.01.2019**

  
**Chief Justice**