

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

MUHAMMAD IMRAN---Petitioner

Versus

The STATE and others---Respondents

Crl. P. No. 860-L of 2021, decided on 5th August, 2021.

(Against the order dated 26.05.2021 passed by the Lahore High Court, Lahore in Crl. Misc. No. 31719-B of 2021).

(a) Criminal Procedure Code (V of 1898)---

---S.497---Post-arrest bail---Offences not falling within the prohibitory clause of S.497(1), Cr.P.C (Non-prohibitory offences)---Denial of post-arrest bail in non-prohibitory offences---Principles.

For an offence which did not fall within the prohibitory clause of section 497(1), Cr.P.C, bail was a rule and refusal an exception. The grounds for the case to fall within the exceptions meriting denial of bail included (i) the likelihood of the accused's abscondence to escape trial; (ii) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (iii) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he had prima facie acted in the commission of offence alleged. The prosecution had to show if the case of the accused fell within any of these exceptions on the basis of the material on the record.

Tariq Bashir v. State PLD 1995 SC 34; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 and Muhammad Tanveer v. State PLD 2017 SC 733 ref.

(b) Criminal Procedure Code (V of 1898)---

---S. 497---Penal Code (XLV of 1860), S. 489-F---Dishonestly issuing a cheque---Bail, refusal of---Accused prone to repeating the offence and absconding---Record showed that the accused had been booked in as much as eight criminal cases under the same offence (S.489-F, P.P.C.) with different complainants and involving sizable amounts of money---Said cases spanned over the years 2018 to 2020 and three cases had been registered after the registration of the present case---Even though the accused had obtained bail in those cases, it did, prima facie, establish that the accused was prone to repeating the offence---Accused having been declared an absconder in the present case for over one and a half year generated the apprehension that he may avoid standing trial and hence delay the prosecution of the case---Material on record made the case of the accused fall under the exceptions to the rule of grant of bail in non-prohibitory offences---Petition for leave to appeal was dismissed and leave was declined.

Tariq Bashir v. State PLD 1995 SC 34; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 and Muhammad Tanveer v. State PLD 2017 SC 733 ref.

Sheikh Abdul Raheem v. The State and others 2021 SCMR 822 distinguished.

Malik Matee Ullah, Advocate Supreme Court for Petitioner.

Khurram Khan, Addl. P.G. along with M. Anwar, ASI. for the State.

Respondent No.2: in person.

Date of hearing: 5th August, 2021

ORDER

SYED MANSOOR ALI SHAH, J.---Post arrest bail was denied to the petitioner in case FIR No.458 dated 07.08.2019, registered at Police Station Larri Adda, Lahore, for offence under section 489-F, P.P.C. through order dated 26.05.2020, passed by the Lahore High Court. He seeks leave to appeal against the said order.

2. According to the crime report the petitioner had issued three cheques in favour of the business of the complainant in the sum of Rs. 2 million each, which were subsequently dishonoured. Learned counsel for the petitioner submits that for an offence not falling within the prohibitory clause grant of bail is a rule and refusal an exception. Relying on Sheikh Abdul Raheem v. The State and another (2021 SCMR 822) learned counsel submitted that previous criminal cases filed against the petitioner, in which he has obtained bail, do not affect his entitlement to the concession of bail. On the other hand learned APG pointed out that

eight other criminal cases have been registered against the petitioner by different parties under the same offence, involving sizable amounts. He adds that the FIR in this case was registered on 07.08.2019 but in spite of the best efforts of the Police the petitioner could not be arrested and was declared a proclaimed offender. Finally, the petitioner was arrested on 28.04.2021 after more than a year and a half.

3. We have heard the learned counsel and have examined the record of the case. We are cognizant of the fact that the offence under section 489-F, P.P.C. does not fall within the prohibitory clause of section 497(1), Cr.P.C. and bail in such a matter is a rule and refusal an exception. The grounds for the case to fall within the exceptions meriting denial of bail include (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. The prosecution has to show if the case of the petitioner falls within any of these exceptions on the basis of the material on the record. See Tariq Bashir,¹ Zafar Iqbal², Muhammad Tanveer³ and order dated 14.07.2021 passed in Criminal Petition No.529 of 2021.

4. Record shows that the petitioner has been booked in as much as eight criminal cases under the same offence with different complainants and involving sizable amounts of money. These cases span over the years 2018 to 2020 and three cases have been registered after the registration of the instant case. Even though the petitioner has obtained bail in those cases, it does, prima facie, establish that the petitioner is prone to repeating the offence. Petitioner having been declared an absconder in this case for over one and a half year generates the apprehension that the petitioner may avoid standing trial and hence delay the prosecution of the case. The material on record makes the case of the petitioner fall under two exceptions to the rule of grant of bail as mentioned above.

5. Reliance of the petitioner on Sheikh Abdul Raheem case⁴ hardly advances his case. First, the said bail order is based on its own peculiar facts besides it does not dislodge the principles settled in the above cited cases. The facts of the instant case involve eight (8) criminal cases registered against the petitioner for the same offence against different parties and some of them have even been registered after the instant case. Additionally, the petitioner has been a proclaimed offender. Therefore, the factual matrix of the instant case is very different from the one cited by the learned counsel.

6. For the above reasons we are not inclined to interfere in the well considered findings of the High Court. Leave is, therefore, declined and this petition is dismissed.

MWA/M-51/SC Bail refused.

¹ Tariq Bashir v. State PLD 1995 SC 34 (2-MB).

² Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 (4-MB).

³ Muhammad Tanveer v. State PLD 2017 SC 733 (3-MB).

⁴ Sheikh Abdul Raheem v. The State etc. 2021 SCMR 822 (3-MB).