ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No. 495 of 2022

GUL SHER ZIA
Versus
THE STATE and another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(3)	**19.05.2022.**	**Mr. Aamir Nadeem Tabish, Advocate along with Petitioner.** **Hazrat Younas, State Counsel.** **Ch. M. Mohsin Maqsood, Advocate for Respondent No.2/Complainant.** **Mr. Waqas Ahmed, A.S.I., P.S. Margallah, Islamabad.** Through the instant petition, the Petitioner [Gul Sher Zia] is seeking pre-arrest bail in FIR No.144/2022 dated 14.03.2022 registered for the offence under Section 489-F, PPC with Police Station Margallah, Islamabad. 2. The facts as per the contents of the FIR are that the Complainant [Hamza Arshad] is doing business of real estate as sales commission agent with 5G Properties situated at Bizzon Plaza F-11 Markaz, Islamabad and that in relation to his said business he met with the Petitioner in the Complainant's office. The Petitioner disclosed that he is also engaged in the business of real estate under the name and style of Top Free Properties (Pvt.) Ltd., situated at 5th Floor Feroze Centre Fazal-e-Haq Road, Blue Area, Islamabad and wants to sell the files of Park View Society Islamabad. To this end, on 13.12.2021 the Complainant visited the office of Petitioner, who in consideration of ten Park View Society files,

(Gulf Estate Block) for plots measuring five marlas and two files for plots measuring ten marlas valued at Rs.17.6 million, received an amount of six million rupees in cash from the Complainant in the presence of two witnesses namely (i) Adil Ali s/o Liaqat Ali and (ii) Usama Afzal s/o Ch. Muhammad Afzal against duly acknowledged receipts. It was mutually decided that remaining Rs.11.6 million will be paid on 15.12.2021 and after that the Complainant can collect all the files. On 15.12.2021, the Complainant paid the balance amount in presence of witnesses and the Petitioner requested for two days' time to handover the files. After two days, on 17.12.2021, the Complainant visited the office of the Petitioner for collection of his files but the Complainant refused to do so. The Petitioner, along with a statement in writing issued in the presence of witnesses, issued two cheques of his own account which are as under:

(i) Cheque No.62729990 dated 20.02.2022 amounting to Rs.12,369,000/- (12.369 million rupees) of UBL Aabpara Branch, Islamabad.

(ii) Cheque No.62729991 dated 25.02.2022 amounting to Rs.5,232,000/- (5.232 million rupees) of UBL Aabpara Branch, Islamabad.

On 21.02.2022 the Complainant presented Cheque No.62729990 dated 20.02.2022 for encashment in JS Bank, G-11 Markaz Branch, Islamabad which was returned by the Bank staff on 22.01.2022 with the objection that there is a difference of amount as stated in numeric and that stated in words. The Complainant immediately informed the Petitioner regarding this mistake but no avail. On

25.02.2022, the Complainant presented the second cheque i.e. Cheque No.62729991 dated 25.02.2022 before JS Bank, F-8 Markaz Branch, Islamabad which was dishonored on 28.02.2022 due to difference of signature. The Complainant again contacted the Petitioner and the Petitioner said that he will contact his Bank and requested the Complainant to present the same on 02.03.2022 for encashment. On 02.03.2022, the Complainant again presented the cheques in his Bank i.e. JS Bank F-8 Markaz Branch, Islamabad and on 04.03.2022 Bank dishonored the cheques on the basis of 'payment stopped by the drawer'. The Complainant again contacted the Petitioner but he flatly refused to return the amount of Complainant. The Complainant received a phone call from the father of the Petitioner namely Zia-ud-din Akbar extending life threats to the Complainant. Now it has come to the knowledge of the Complainant that the Petitioner has also defrauded many people under the garb of Top Free Properties (Pvt.) Ltd., and whereas this company is not registered anywhere. The Petitioner had issued these cheques with different signature and with the difference in numeric and words with dishonest intention to defraud the Complainant of his hard earned money. The Petitioner issued the dishonored cheques with dishonest intent.

3. Learned counsel for the Petitioner, *inter alia*, contended that none of the ingredients of Section 489-F PPC exist in the instant case; that there is an unexplained delay of ten days in registration of FIR; that if the allegations are admitted for the sake of arguments which are not

so admitted, even then it is a matter of civil nature but the Complainant is illegally dragging the petitioner in the instant case on the basis of of mala fides intentions; that the case against the Petitioner is false and frivolous; that the Petitioner is a sales marketing manager at Top Free Properties (Pvt.) Ltd., who for business purpose went along with his boss, Usama Afzal to the Complainant, who is Usama Afzal's cousin and investor where a fight broke out between the said Usama Afzal and the Complainant; that the Complainant is not entitled to lodge the instant case because the cheques were forcibly taken from the Petitioner by the Complainant and Usama Afzal at gun point; that the Petitioner also filed a civil suit against the Complainant for Declaration, Cancellation of Cheques bearing No.6279990 and 6279991 and Permanent Injunction which is still pending adjudication; that the Petitioner also filed an application under Section 22-A and 22-B Cr.P.C. for registration of FIR against the Petitioner although the same was dismissed; that to the extent of commission of offence as alleged in the FIR case against the Petitioner is of further inquiry; that the offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C.; that Petitioner is previously non-convict and is ready to furnish solvent surety to the satisfaction of this Court; and that the Petitioner is innocent and has been falsely implicated in this case. Learned counsel prayed for confirmation of pre-arrest bail already granted to the Petitioner vide order dated 21.04.2022.

4. Learned counsel for the Respondent No.2/Complainant stated that there is no delay in filing the FIR as the Complainant issued a notice to the Petitioner on 05-03-2022 after dishonor of the second cheque to which the Petitioner replied on 12-03-2022, thereafter the FIR was lodged; that the issuance of cheques is not denied which were given in the presence of witnesses along with statement in writing; that no case of mala fide intentions has been made out by the Petitioner; that Petitioner's allegations are concocted and not believable; that in view of the foregoing the Petitioner is not entitled to the extraordinary relief of pre-arrest bail. Learned counsel for the Complainant relied on *Abdul Jabbar Vs. The State*, 2021 YLR 367 and *Syed Zahoor-ul-Hassan Shah Vs. The State*, 2021 PCr.LJ 886 and submitted that the instant petition is liable to be dismissed.

5. Learned State Counsel submitted that the cheques were issued in the presence of witnesses and the issuance of cheques are not denied; that the receipt of money as per FIR is also not denied; and that there is sufficient material available on record to connect the Petitioner with the commission of the alleged offence, therefore, present petition may be dismissed.

6. Heard arguments of learned Counsel for the parties as well as learned State Counsel and have also perused the police record submitted at the time of hearing.

7. The Petitioner has admitted issuing the dishonored cheques, however, claims that it was not towards fulfillment of any obligation and

instead claims that they were obtained from him by the Complainant at gunpoint due to an altercation between the Complainant and the Petitioner's boss, Usama Afzal. The foregoing narration does not seem plausible. In any event, deeper appreciation of evidence is not permissible at bail stage. Merely filing suit for cancellation of the Dishonored Cheques does not make out a case for the grant of the extraordinary relief of pre-arrest bail. *Prima facie* it appears that the cheques were issued by the Petitioner with dishonest intent.

8. In the case of *Rana Abdul Khaliq versus The State and others*, 2019 SCMR 1129, the Honorable Supreme Court while cancelling the bail granted to the accused held as follows:

> *"2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trumped up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least."*

9. In view of the foregoing, on a tentative examination, it does not appear that the instant proceedings are mala fide, or for ulterior motives or abuse of process of law.

10. For what has been discussed above, instant bail petition is **dismissed** and order dated 21.04.2022, granting ad-interim pre-arrest bail to the Petitioner, is hereby recalled.

11. Needless to observe that all the observations made hereinabove are tentative in nature and shall not affect the merit of the case.

(SAMAN RAFAT IMTIAZ)
JUDGE

JUNAID