

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No.6705-B/2025.

Muhammad Nawaz. Vs. The State and another.

| S.No. of order/ Proceeding | Date of order/ proceeding | Order with signature of Judge and that of parties or counsel, where necessary |
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| | 27.03.2025. | Malik Muhammad Waqas, Advocate for the petitioner. M/s Muzammal Atiq Ch. and Sajjad Mehmood Bhatti, Advocates for the complainant. Mr. Shakeel Ahmad Pasha, Deputy Prosecutor General Haroon Inspector, with record. |

Petitioner (Muhammad Nawaz) has sought his post arrest bail in case bearing FIR No.180/2023, dated 19.06.2023, for offence under Section 17/22, Emigration Ordinance, 1979, 3/6 The Prevention of Smuggling of Migrants Act, 2018, registered with Police Station FIA, Anti Human Trafficking & Smuggling Wing (AHTC/AHS), Lahore after refusal of the same by the Court of learned Judge Special Court Central-III, Lahore vide order dated 14.01.2025.

2. According to F.I.R. on 16.06.2023 a fax/e-mail message from Parep Athens Greece through FIA Headquarter received at Police Station FIA AHTC Lahore, wherein it was informed that a vessel carrying illegal emigrants, departed from Bin Ghazi Port Libya for Italy, and sank fifty nautical miles south west off Pylos, the territory of Greece. A total of 104 victims including 12 Pakistani illegal migrants were rescued by the Hellenic Coastguards, whereas 79 unidentified bodies were recovered. In this horrible incident

Pakistan human smugglers, Riasat having mobile No.+351929043385 resident of Sheikhupura and Muhammad Nawaz *alias* Nawaz Sansi son of Rehmat Ali having CNIC No. 35404-47487485-9, resident of village Makki 460, Tehsil & District Sheikhupura were found involved. Allegedly, they received Rs.24,00,000/- from victim, **Hammad Ali** son of Muhammad Boota (CNIC.34103-5946966-5), resident of village Fatehpuri Farooqabad, District Sheikhupura, who was also rescued by the Hellenic coastguards. This fact was verified by the father of the victim Muhammad Boota, who stated that he paid Rs.24,00,000/- to the human smugglers Riasat resident of Sheikhupura and Muhammad Nawaz alias Nawaz Sansi for sending his son Hamad Ali to Italy via Libya.

3. Bail was sought mainly on the grounds that Muhammad Nawaz (petitioner) was only named in the FIR; there was no proof of receiving any payment by him for the purpose of sending Hamad Ali intending emigrant abroad/Italy via Libya; petitioner was subjected to victimization by FIA officers for the purpose of blackmailing and minting the money; moreover offences under sections 17/22 of Emigration Ordinance, 1979 were entailing the penalty only of fine in alternate, as such would not be hit by embargo contained under Section 497 Cr.P.C.; in such like cases rule was bail, whereas its refusal would be an exception, which was lacking in the present case.

4. Learned Assistant Prosecutor General appearing on behalf of FIA assisted by learned counsel for Muhammad Boota (father of intending emigrant) opposed present petition on variety of

grounds. They added that Hamad Ali intending emigrant was sitting in the boat proceeding from Libya to Italy, which was capsized resulting into the death of various persons and he/Hamad Ali also met his death in the above accident and his dead body could not be found so far; petitioner Muhammad Nawaz and Riasat Ali co-accused happened to be brothers-in- law inter se and working like a gang, therefore, petitioner was not entitled to any relief.

5. Arguments heard. File perused.

6. Petitioner was under the allegation that he received Rs.24,00,000/- from one Hamad Ali for sending him Italy while travelling on a boat going from Libya to Italy sank as result of capsizing of the boat and met his death along with 79 others.

7. Material in the form of statement of father of above Hamad Ali (intended emigrant) and others witnesses under section 161 of Cr.P.C. was floated on the surface, which sought endorsement, corroboration and confirmation from the material collected during the investigation. Petitioner and his companions, being human smugglers, sent Hamad Ali to Libya for further transportation his physic to Italy, but he met his death in the incident of boat capsizing within the territorial water of Greece. Death of said intending emigrant stood endorsed and verified during the investigation, but dead body of Hammad Ali could not be found so far. Muhammad Boota (father of intended emigrant) was having no reason to falsely involve the petitioner in such like heinous crime. Prima facie involvement of petitioner in the present case stood established by surrounding circumstances speaking against him with proud of strength.

Above said crime badly affected the reputation of Pakistan at international level and lowered down its prestige.

8. So far as question of taking into consideration of lesser penalty of fine for the purpose of bail was concerned, there was no cavil to the proposition that Honourable Superior Courts ruled in plethora of the judgments that lesser penalty provided for the offence should be taken into consideration for the purpose of bail, but at the same time the august Supreme Court considered the higher penalty provided for the offence in exceptional cases, where the circumstances were unusual, anomalous, harsh and presenting a dreadful picture and tentative assessment thereof was *prima facie* leading to an inference that most probably the higher sentence provided for the offence was likely to be awarded. In this regard, I have sought guidance from the case of Haji Shahid Hussain and others v. The State and another (2017 SCMR 616). I am further fortified by another judgment in the case of Jehanzeb alias Bhobi v. The State (2002 SCMR 1380), wherein apex Court was pleased to decline bail to the accused in a case for offences under Section 17/22 of Emigration Ordinance, 1979.

9. In the case in hand intending emigrant met his death due to the capsizing of boat into the water and his dead body could not be found, therefore, higher penalty of imprisonment extending upto fourteen years prescribed under Section 22 of Emigration Ordinance, 1979 was also likely to be awarded in addition to the lesser penalty of fine, as such I believe that the offence in the present case in the light of peculiar

circumstances was squarely falling within embargo contained under Section 497 Cr.P.C. Moreover, incidents of depriving the innocent persons of their hard earned money by human smugglers showing them rose garden of arranging lucrative jobs for them in foreign countries are increasing day by day all over the country and there is a need to curb this menace with an iron hand. Such like alarming situation does not permit me to exercise my discretion in favour of the petitioner.

10. For the discussion made supra, the present petition has no force, hence dismissed.

(Tanveer Ahmad Sheikh)
Judge

Approved for reporting

Judge

Shahzad Ahmad Nasir