

*Ch. Pervaiz Elahi* Vs *The State and another*

20.05.2024 Mr. Amir Saeed Rawn and Ch. M. Farman Manais,  
learned counsel for the petitioner.  
Abdul Samad Khan, learned Additional Prosecutor  
General on behalf of State.  
Malik Naveed Tariq, Assistant Director and Mrs.  
Sajida Pervaiz, Assistant Director (Legal) ACE,  
Lahore Region.

2. Allegedly the *FIR* was lodged after inquiry conducted with respect to inductions against different posts in the Punjab Assembly, in pursuance of advertisement dated 26.05.2021. As per the allegations, the petitioner headed meeting of the departmental selection committee on 09.08.2021 when the result of written examination of the individuals named in the *FIR* was changed by committing forgery. The petitioner applied for his post-arrest bail on 05.06.2023 which was conditionally granted by the learned D&SJ / Special Judge, Anti-Corruption, Lahore (the '*Anti-Corruption Court*') and later upon failure of condition the same was recalled vide order

dated 11.10.2023. This Court on 07.11.2023 dismissed the petition No. 69172 of 2023 and at the same time it was observed that in the peculiar circumstances of the case, the petitioner is not precluded from filing fresh application before the learned concerned Court. Consequently, the present petitioner approached the learned *Anti-Corruption Court* on 13.03.2024 seeking post-arrest bail, which was dismissed vide order dated 27.03.2024.

3. Mr. Amir Saeed Rawn, learned counsel for the petitioner has submitted that the petitioner is about eighty years old citizen of the Country and deserves the concession of bail, as this Court in several cases has released the accused persons on this ground. Learned counsel for the petitioner has relied on cases titled “Alam Khan and Others Versus The State” (2022 P Cr. LJ 338) and “Mehboob Hassan Versus Akhtar Islam and Others” (2024 SCMR 757) and he has stated that alleged recovery of Rs. 4,100,000/- is of no help to the prosecution because number of the currency notes or specifications are neither given in the *FIR* nor it is mentioned in the recovery memorandum, thus, at this stage, no benefit of such recovery can be given. Learned counsel for the petitioner has added that though the allegation in the *FIR* attracts the prohibitory clause of section 497 *Cr.P.C* but prosecution, even at this stage, is required to show sufficient material / evidence, constituting *reasonable grounds* that the accused has committed an offence falling within the prohibitory limb of the above provision; that the burden is not on the petitioner in this regard. He further stated that accused can only show that evidence collected and relied by the prosecution itself creates a reasonable doubt in the

prosecution case and upon showing the same the petitioner is entitled to the benefit. He then contended that in the *FIR* forgery is attributed to the petitioner, during committee meeting which was held on 09.08.2021, whereas, the result of the inducted persons named in the *FIR*, was published by Open Testing Service (*'OTS'*) on the website on 29.07.2021 and interview letters were issued on 30.07.2021, thus, the allegation of forgery on 09.08.2021 *ex facie* is implausible.

4. Conversely, Mr. Abdul Samad, learned Additional Prosecutor General has vehemently opposed this petition. He has contended that the deeper appreciation is not permissible at this stage. He relied upon case titled "Imtiaz Ahmed and another Versus The State" (PLD 1997 Supreme Court 545) and stated that petitioner has committed an offence detriment to the society being holder of a public office; that in the given circumstances approach should be reformation-oriented with the desire to suppress the mischieves. In course of arguments, learned Additional Prosecutor General has also relied upon case titled "Mst. Bashiran Bibi Versus Nisar Ahmad Khan and Others" (PLD 1990 Supreme Court 83). Learned Additional Prosecutor General has vigorously argued that it is upon the petitioner / accused to show *reasonable grounds* for believing that the petitioner is not involved in a case falling within the prohibitory clause. Learned Additional Prosecutor General has much focused on the gravity of offence and stated that in such offences bail should be refused.

5. Heard.

6. The Supreme Court of Pakistan in cases titled “Salman Mushtaq and Others Versus The State through P.G. Punjab and another” (2024 SCMR 14), “Zaigham Ashraf Versus The State and Others” (2016 SCMR 18) and “Tariq Bashir and 5 Others Versus The State” (PLD 1995 Supreme Court 34) has already settled that the expression *reasonable ground(s)* as contained under section 497 of Cr. P.C. obligates the prosecution to unveil sufficient material or evidence to disclose that the accused has committed the offence falling within the prohibitory clause and when the prosecution fails to satisfy the Court that the *reasonable ground(s)* do exist to believe that accused is guilty of such offence, then the Court can release accused person(s) on bail. It is also settled that for ascertaining the existence of *reasonable ground(s)* that accused is guilty of offence punishable with death, imprisonment of life or with ten years imprisonment, the Court cannot conduct a preliminary trial but will only make a tentative assessment. In case titled “Manzoor and 4 Others Versus The State” (PLD 1972 Supreme Court 81) the Supreme Court observed that it must be remembered that bail is not to be withheld as a punishment and there is no legal or moral compulsion to keep people in jail merely for the fact that the allegations against them are punishable with death or with imprisonment as indicated in prohibitory clause. It will be beneficial to reproduce the relevant paragraph of the said judgment:-

*“It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reason-able*

*grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.”*

7. In order to show the existence of *reasonable grounds*, the prosecution has relied upon the recovery allegedly effected from the petitioner and one of his co-accused namely Muhammad Khan Bhatti. It is stated by the learned Additional Prosecutor General that vide recovery memorandum dated 22.10.2023, duly witnessed by police / officers of the establishment, co-accused person / Muhammad Khan Bhatti got recovered laptop, whereas, the petitioner got recovered Rs. 4,100,000/- from his house vide recovery memorandum dated 27.10.2023. Learned Additional Prosecutor General at this juncture was asked to show from the record if currency notes allegedly recovered have any specification or special marks so that, prior to trial, recovery of unspecified cash can be considered as a *reasonable ground* as necessitated under section 497 of the *Cr.P.C.*; the learned Additional Prosecutor General has not given any answer. Admittedly, the allegation in the *FIR* is that the departmental selection committee, headed by Ch. Pervaiz Elahi / the petitioner, on 09.08.2021 has made some changes or committed forgery in the written test, however, no denial, based on plausible explanation, could be made by the prosecution that result was announced by *OTS* on the website on 29.07.2021 i.e. much prior to the alleged date of forgery. The delay of about two years in lodging the case also went unexplained by the respondent-side.

8. Now turning to argument of Mr. Abdul Samad as to the gravity of the offence. I am of the opinion that heinousness or gravity of offence or mere possibility that ultimately the accused person can be punished with ten years imprisonment, by itself is not sufficient to divest this Court from the discretion to grant after arrest bail specifically when the case is one of further inquiry. Moreover, in case titled “Chairman, National Accountability Bureau through P.G., NAB Versus Nisar Ahmed Pathan and Others” (PLD 2022 Supreme Court 475) the Supreme Court also has observed that when two opinions can be reasonably formed on the basis of the material before the Court and both of them more or less pass the test of plausibility and none of them can be termed as perverse opinion then the one favourable to accused person should be preferred; to err in granting bail is better to err in declining it as the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail but no satisfactory reparation can be offered to an innocent person on his acquittal for unjustified imprisonment during the trial.

9. Further reference can be made to the cases titled “Khalid Saigol Versus The State” (PLD 1962 Supreme Court 495) and “Husnain Mustafa Versus The State and another” (2019 SCMR 1914). It will be advantageous to reproduce the relevant part from “Khalid Saigol” case (*supra*), which reads as under:-

*“It will be observed that even under section 497 (1) in the case of an offence punishable with death or transportation for life the mere heinousness of the offence is not by itself a circumstance sufficient to take away the discretion of a Court to grant bail but in addition thereto there must also exist reasonable grounds*

*for believing that the person seeking bail has been guilty of such an offence. Subsection (1) of section 497 evidently applies to a stage where the accused is first brought before the Court or his arrest is brought to the notice of the Court and, as such, the Court is not called upon at that stage to conduct anything in the nature of a preliminary trial to consider the probability of the accused's guilt or innocence. It has, nevertheless, as a necessary part of its functions, namely, to ascertain as to whether there exist any reasonable grounds upon which its belief can be founded, to look at the materials placed before it by the investigating agency and be prima facie satisfied that some tangible evidence can be offered which, if left unrebutted, may lead to the inference of guilt before it can come to the conclusion that its discretion no longer exists.”*

10. I have found that the case against the petitioner calls for further inquiry into his guilt. This petition is, therefore, ***allowed***. The petitioner / Ch. Pervaiz Elahi is admitted to after arrest bail in the above case subject to furnishing bail bond in the sum of Rs. 500,000/- (rupees five hundred thousand only) with two sureties each in the like amount to the satisfaction of the learned trial Court.

11. Before parting with this order, I would like to observe that the observations made above are tentative and same shall not be considered at the time of the trial.

**(Sultan Tanvir Ahmad)**  
**Judge**

Announced in open Court on 21.05.2024.

J.A. Hashmi\*

**Judge**