

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sarmad Jalal Osmany
Mr. Justice Dost Muhammad Khan

Criminal Petition NO.12 of 2014

(On appeal from the judgment dated 23.12.2013
passed by the Lahore High Court, Lahore in
Crl.Misc. No.12290/B/2013)

Muhammad Ramzan

... Petitioner

versus

The State
Muhammad Hussain

... Respondents

For the petitioner: Mr. Muhammad Akram Gondal, ASC
A/w petitioner in person

For respondent No.1: Ch. Zubair Ahmed Farooq, Addl. PG, Pb.
A/w Qaiser Riaz, IO

For respondent No.2: Mr. Basharatullah Khan, ASC

Date of hearing: 07.02.2014

ORDER

Dost Muhammad Khan, J.— This petition for leave to appeal has been filed against the judgment of learned single Judge in Chamber of the Lahore High Court dated 23.12.2013 refusing pre-arrest bail of the accused petitioner in case FIR No.1145/2012 registered for crimes under sections 420, 468, 471 PPC on 21.11.2012 by Police Station Civil Lines, District Faisalabad.

2. It is alleged in the FIR by Muhammad Hussain respondent that a forged letter was manipulated ostensibly shown to have been written by the Director Excise & Taxation bearing No.ADM-111-39

dated 30.08.2008 containing an order of demotion of the complainant from the post of Excise Inspector to that of Clerk. During departmental inquiry this letter was found to be forged and tampered one.

3. It is also alleged in the FIR that complainant while attached to Circle Islam Nagar, Block No.5 of the Excise Department discovered that one Babar Naseem Junior Clerk with the connivance and assistance of Excise Inspector Iftikhar Hussain Bhatti replaced the sheets of the relevant register of property tax causing loss in million rupees to the public exchequer and it was on his pointation that they both were proceeded against departmentally on such allegations, thus, their services were terminated and recovery of embezzled amount was also ordered by the competent authority.

4. It was on that account that after having developed personal grudge against the complainant, they hired the services of present petitioner to terrorize and harass the respondent and in the preparation of the above forged office order the present petitioner was equal partner, which was proved false and forged in the departmental inquiry.

5. It was contended by the learned ASC for the petitioner that co-accused equally charged with the same and similar allegations have been granted bail, both on merits and on the principle that offences under sections 468, 470 are non-compoundable while offences under sections 420 is punishable with 7 years RI. Thus, none of the offences fall within the prohibitory limb of section 497 Cr.PC. Hence, not only on the principle of consistency petitioner is entitled to grant of pre-arrest bail but also because as has been laid down by this Court in the case of Tariq Bashir v. The State (PLD 1995 SC 34) that grant of bail in the

offences not punishable with imprisonment for less than 10 years shall be a rule and refusal shall be an exception.

6. Learned ASC for the complainant/respondent and the Prosecutor General Punjab opposed the grant of pre-arrest bail on two-fold grounds that co-accused was granted post arrest bail and for grant of pre-arrest bail element of malafide is to be essentially established and because his pre-arrest bail was not confirmed by the learned Trial Judge, he escaped from there without surrendering to the lawful custody of the police or the Court, hence he is not entitled to such extra-ordinary relief.

7. We have attended to the record available before us and after hearing the submissions of both the sides we are of the view that there are many omissions in the case committed by the investigating agencies, however, at this stage we will not discuss those points in detail, lest it prejudice the case of one or the other side. However, suffice it to say that the co-accused to whom the same and similar role was attributed in the transaction, has been granted post arrest bail and because the charge against both the accused is of indivisible nature and because the two officers who were removed from service during departmental inquiry have been reinstated into service, as was stated at the bar, thus, in the circumstances, the petitioner would certainly be entitled to grant of post arrest bail, if his pre-arrest bail is not confirmed. Such exercise would neither improve the case of the prosecution in any manner during investigation nor would serve the ends of justice because the petitioner too would be entitled to post-arrest bail on the principle of consistency, fully attracted in his case.

8. Accordingly, this petition is converted into appeal and is allowed. The interim pre-arrest bail granted to the petitioner on 16.01.2014 is accordingly confirmed on the same surety bonds.

Judge

Judge

Islamabad, the
7th February, 2014
Nisar/*

Not Approved For Reporting