

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE DOST MUHAMMAD KHAN

Criminal Petitions No.268-270/2015

(On appeal from the judgment/order dated 13.04.2015 passed by the Lahore High Court, Rawalpindi Bench in Crl.Misc. No.288-B/15, 289-B/15 & 285-B/15)

Ch. Muhammad Ashfaq

...Petitioner in all cases

Versus

The State & others

..Respondents in all cases

For the petitioner:

Malik Jawad Khalid, ASC
(in all cases)

For respondents No.3,5,6,9: Raja Zaheer ud Babar, ASC
(in Crl.P.268/15)

For the State:

Mr. Nayyab Gardezi, Standing Counsel
Mr. Tariq Bilal, ASC

Other respondents:

N.R.

Date of hearing:

01.7.2015

JUDGMENT

Dost Muhammad Khan, J.— Ch. Muhammad Ashfaq is seeking leave to appeal through Criminal Petitions No.268, 269 and 270 of 2015 against the order/judgment of the learned Judge in Chamber of the Lahore High Court, Rawalpindi Bench dated 13.04.2015, wherein grant of bail was refused to the petitioner in all the three cases, registered vide FIRs No.104/2014, 107/2014 and

105/2014. This single judgment shall decide all the three petitions because questions of law in the same are almost identical.

The arguments of the learned ASCs for the petitioner and the complainants as well as for the State heard and record perused.

2. The epitome of all the three crimes is that, the petitioner along with other co-accused duly nominated in all the three FIRs had established, **"Cyber Online Job Enterprises in Office No.59/62, 3rd Floor, Computer Market, Bank Road, Saddar Rawalpindi"**. They were offering online jobs to the desiring candidates, albeit they were having no channel of employment in this regard nor having any means whatsoever to provide jobs to the desiring candidates. It was a well contrived strategy how to exploit the public at large and to deprive them of their hard earned money.

3. It is alleged that during the entire process, the petitioner along with his accomplices through deceptive tactics and illegal means in these and many other cases have deprived many desiring candidates of a sum of rupees more than five millions, however, they neither provided the job nor returned the amount, they had received from the candidates thus, complaints were made with the FIA of the Circle and after open inquiry followed by investigation, almost more than 15 cases were registered against them while, learned ASC representing the FIA disclosed that in all more than 50 complaints were lodged with the FIA, which are under inquiry and investigation.

4. Learned ASC for the petitioner came out with twofold plea; firstly, that the petitioner is not a partner in the company duly registered with the Registrar of the companies, nor his name is

appearing in the certificate issued to the company by SECP permitting them to run the business, besides he has been granted bail in 13 cases for the similar role he has been attributed and; secondly, the offences under Cyber Crimes Laws are not constituted, while the rest of the offences do not fall within the prohibitory limb of section 497 Cr.P.C. hence, the Court discretion is not taken away in granting bail except in special and peculiar circumstances of a particular case.

5. The learned ASCs for the FIA and the complainants strongly opposed grant of bail to the petitioner and also relied on certain case laws, particularly the case of **Muhammad Rafique Vs. State (1997 SCMR 412)** and further urged that distinction has been drawn by this Court between the two categories of offences, the one where an individual is defrauded and the other where the society at large is the victim, in the latter case bail has been refused, notwithstanding that the offence, for which the accused was charged in that case, was not falling within the prohibitory part of section 497 Cr.P.C.

6. It is not denied that the accused petitioner was arrested from the same premises where these dubious, tricky and shadowy transactions were being carried out through mutual collaboration of all the accused and because he has been directly nominated in the written complaints made by the victims/complainants.

7. Unfortunately, there is a growing tendency on the part of swindlers, deceiving the poor public through entrapping tricks of this nature. In this way, such scams are becoming the order of the day, therefore, same need to be curbed with iron hand and no mercy or

leniency should be shown to persons involved in such organized crimes.

8. To get the concession of bail in offences not punishable with imprisonment for ten years, life or death, is not the right of the accused but it is certainly discretionary with the Courts of law, keeping in view the facts and circumstances of a particular case.

9. In ordinary course and in crimes of ordinary nature, such discretion is to be exercised in favour of the accused however, when ingenious contrived and designed methodology is pressed into service for defrauding a bulk of poor peoples through fraudulent means, would take out the case of such accused person from the ordinary principle, where the discretion in granting bail by the court shall ordinary not to be exercised in a routine manner taking the matter leniently otherwise, the entire society would be corrupted through such acts of detestable nature.

10. At the moment, as stated at the bar, more than 50 complaints of similar nature have been lodged against the petitioner, which are still under inquiry/investigation thus, on the available record, the petitioner appears to be a member of a gang of swindlers involved in deceptive tactics, depriving poor and needy people of their hard earned money, who attached high hopes, reposing confidence in the petitioner and his accomplices that they would provide lucrative and good earning job in return. The device and well designed strategy attributed to the petitioner and his accomplices, if is allowed to go unchecked, the same is likely to corrupt the whole society and would encourage the others to indulge in the same and similar practice.

In the above background, the discretion vested in the learned High Court and the Trial Court in refusing to grant bail has been exercised according to the well settled principle on the subject, to which no exception could be taken.

11. Even otherwise, under the provision of Article 185(3) of the Constitution unless and until a particular matter involving important point of law, relating to the public at large is made out, the extraordinary remedy under the said provision cannot be extended in a routine manner in each and every case because the qualifying phrase has made interference by this Court conditional on the fulfillment of the above essential requirement of the constitutional provision. From the facts and circumstances, we do not see any important point of law involved in this case of public importance besides the fact that charge-sheets in all the cases have been submitted before the Trial Court and trial is in progress and on this account too, keeping in view the principle laid down in the case of Muhammad Ismail v. Muhammad Rafique (PLD 1989 SC 585) at such stage, deep appreciation of evidence or grant of bail on merits is not permissible practice.

12. Accordingly, finding no legal merits in all these three petitions, the same are dismissed and leave to appeal is refused to the petitioner. However, in the interest of justice and also keeping in view the cardinal principle that an accused person shall have a right to speedy trial, we would direct the Trial Court to expedite the trial and decide the case at the earliest as far as possible, provided that the petitioner or any person acting on his behalf is not found instrumental in delaying the disposal of the cases.

The above observations are tentative in nature and in no manner shall influence the mind of the Trial Court, which shall decide the cases on the basis of evidence, to be recorded at the trial.

These are the reasons for our short order of even date, which is to the following effect: -

"We have heard the arguments in all the three connected petitions. For the reasons to follow separately leave is refused and these petitions are dismissed."

Judge

Judge

Islamabad, the
1st July, 2015
Nisar /-'

'Approved For Reporting'