

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

Criminal Misc. No. 924-B/ 2020
John Ebuka Okeke alias Khadim
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.
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08.09.2020

Mr. Hammad Akbar Wallana, Advocate for petitioner.
Ch. Muhammad Tahir Mehmood, AAG.
Complainant in person.
Fazal Maqbool SI, FIA CCC, Islamabad.

This is post-arrest bail petition by accused/petitioner (*John Ebuka Okeke alias Khadim*) in case FIR No.39, dated 19.12.2019, under Section 14 of PECA, 2016 read with Sections 419, 420, 468, 471, 109, 34 PPC and Section 14 of the Foreigners Act, 1946, Police Station FIA Cyber Crime Circle, Islamabad.

2- Briefly, the allegations set-forth in the FIR are that petitioner along with co-accused defrauded the complainant to the tune of Rs.2.6 million, by posing himself an employee of Shelter Saving and Loan Limited Bank Landon, in order to deliver an amount of US\$-30 million for social welfare activities in Pakistan. The complainant deposited the said amount in various accounts of co accused and also sent the money through the Western Union.

3- The role of the petitioner, as per investigation, was that he visited the complainant by posing as Bank Agent to deliver the black Dollars in Butt Lodges showing his name as Khadim; visited the Taxi Driver Muhammad Asif in order to collect money on the raiding day; found an active gang member of Nigerian scam of financial fraud and was residing in Pakistan with forged Passport and fake Pakistani visa and fake arrival/departure slip.

4- Learned counsel for the petitioner contends that petitioner has falsely been implicated by the

FIA staff; that he was apprehended when he went to the Ministry of Interior for the payment of over stay fee; that co-accused namely Rehan and Yousaf have been allowed bail by this Court and by the learned Trial Court respectively, therefore, petitioner deserves the same treatment under the principle of consistency; that the offence does not fall within the ambit of prohibitory clause; that allegations to the extent of Section 14 of the Foreigners Act, 1946 calls for further inquiry, therefore, petitioner is entitled to the concession of post arrest bail. Learned counsel placed reliance upon case law reported as 2019 P.Cr.L.J. 472 (Islamabad), 2017 P.Cr.L.J. 561 (Sindh), 2020 MLD 788 (Sindh) and 2018 YLR 368 (Peshawar).

5- Conversely, learned AAG submits that the alleged offence falls within the ambit of prohibitory clause; that role of the petitioner is distinct than that of co-accused, who were allowed bail; that the petitioner is active member of the gang; that the petitioner is also guilty of entering into Pakistan on the basis of fake Passport and cannot be held to the concession of post arrest bail.

6- Arguments heard, record perused.

7- Perusal of record reveals that role of co-accused Rehan and Yousaf, who were allowed post-arrest bail, was regarding receipt of certain amounts from the complainant in their respective Bank Accounts and it was observed that whether the bank account maintained in the name of the petitioner was used for the commission of offence with his conscious knowledge requires further probe, while the petitioner by posing as Bank Agent, had met with the complainant and a taxi driver for collection of the money while his travelling documents were also found to be forged one. Thus, the role of the petitioner is distinct than that of co-

accused mentioned above, therefore, principle of consistency does not apply in his case.

8- As far as merits of the bail application are concerned, although the complainant has effected compromise with the petitioner and has sworn an affidavit to this effect as reveals through order of the learned Trial Court dated 30.06.2020, yet the fact remains that the offence under Section 420 PPC and Section 14 of the PECA, 2016 are non-compoundable though do not fall within the prohibitory Clause of Section 497 Cr.P.C and in such like cases, the rule is bail and refusal thereof an exception. The petitioner is a Nigerian national; therefore, there is chance of his escape in case of release on bail, which can be taken as an exceptional circumstance.

9- The petitioner is also accused of offence under Section 14 of the Foreigners Act, 1946, because as per report under Section 173 Cr.P.C, his passport according to Expert Opinion Report was found fake and the Pakistani sticker affixed on the said Passport at Page No.7, 9 and 11 were also fake. Section 14 ibid is punishable for a term which may extend to ten years and fine which may extend to ten thousand rupees.

10- Moreover, it is also necessary to mention that the newly added section 14-A of the Act, imposes restriction on release of such foreign accused who cannot justify his stay in Pakistan. For ready reference Section 14-A is reproduced below:-

"14-A. Restriction on release on bail:- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, any person accused of any offence punishable under subsection (2) of section 14 shall not be released on bail, if there appear reasonable grounds for believing that he has been guilty of such an offence".

11- In the instant case, as stated earlier, the petitioner has nothing in black and white from the Government of Pakistan/authority such as visa, valid permit or any other document to justify his stay in Pakistan, as provided under sub-sections (2) and (3) of Section 14-D of the Act.

12- Section 14-C of the Act of 1946 is clear which does not permit release of a foreigner even on expiry of his sentence under the Act, which says that a foreigner having no permission to stay in Pakistan if convicted and sentenced to imprisonment under the Act, shall not be released even on the expiry of his sentence and shall remain in custody for a period not exceeding three months to enable arrangements for his deportation to be finalized. For convenience, section 14-C of the Act of 1946 is reproduced below:-

“14C. Custody pending deportation:- A foreigner, having no permission to stay in Pakistan, who has been convicted and sentenced to imprisonment under this Act shall not be released on the expiry of the sentence and shall continue to remain in custody for a period not exceeding three months to enable arrangements for his deportation to be finalized”.

13- Moreover, challan has already been submitted on 19.02.2020, therefore, petitioner should focus on early conclusion of the case by submitting all his evidence before the court of competent jurisdiction.

14- In view of the restrictions imposed by the statute referred to above, viz-a-viz, alleged involvement of the petitioner in the commission of the alleged offence, there exists no circumstance which may warrant his release on bail. Resultantly, the instant bail petition is accordingly **dismissed**.

15- Needless to mention that above is only tentative assessment for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.Ansari