

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CRL. MISC. NO.109-B/2014.

FARKHAND IQBAL

VERSUS

THE STATE

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

14.03.2014

Syed Muhammad Tayyab, Advocate for the petitioner.

Mr. Jahangir Jadoon, learned Standing Counsel.

Record produced by Qaisar Masud Deputy Director (Law), Khalid Naeem, Assistant Director (Legal) and Alamdar Shah, Inspector, FIA.

The petitioner seeks post arrest bail in case FIR bearing No.04, registered under Sections 420/468, 471, 409, 109 PPC read with 5(II) 47 PCA, at Police Station FIA/SIU, Islamabad on 26.4.2013.

2. Briefly stated the facts as narrated in the FIR are that during an enquiry No.41/12, it transpired that CDA board had allotted 109 residential plots to the officers of CDA, who fulfilled the prescribed criteria of allotment of plots on 21.6.2012. But the present petitioner with the connivance of his accomplices deceitfully managed to add 22 new names of different officers on 09.01.2013 through fictitious balloting, without approval of the competent authority. Due to this illegal act, the eligible officers of CDA were deprived of their legitimate rights and number of plots were also increased from 109 to 113. Petitioner by

misusing his official position also transferred five plots in sector I-8 Islamabad to Federal Government Employees Housing Foundation against which he received huge amount as illegal gratification from different property dealers, due to which loss of millions of rupees was caused to CDA, hence, this FIR.

3. After failure to get relief from the Court of Special Judge Central, Islamabad, he filed the instant post arrest bail before this Court.

4. Learned counsel for the petitioner contends that petitioner being civil servant, having unblemished previous record, never indulged in any other criminal activities or case. He is officer of Grade-21. Prior approval as required by Rule-5 of the FIA Inquiry Rules has not been obtained. Prior permission from the Ministry of Interior was required and without obtaining the same, they could not conduct the inquiry. After registration of the FIR, investigation conducted and arrest of the petitioner is thus illegal. The petitioner was never given an opportunity to defend himself even during the course of investigation. 12 plots on the request of FGEHF were placed on their disposal, which under no circumstances can be termed as illegality committed by the petitioner. A request received at the end of Chairman, who having acting charge only written as "*Please put up/process*". After processing the same though approval accorded on a office note. The petitioner languished 14 days physical remand, but nothing recovered nor any

incriminating evidence extorted from him, therefore, his detention in jail would be a futility. The case of prosecution entirely resting upon documentary evidence, which has been seized by the Investigating Agency. He being officer of Grade-21 not supposed to abscond nor there is any such apprehension extended by the Investigating Agency. The allegations levelled in the FIR at initial stage could not cover new chapter now disclosed. With regard to managing 22 new names of different officers through fictitious balloting is entirely attributed to Naveed-ul-Haq, who is granted bail by this Court vide order dated 12.6.2013. Therefore, the present petitioner deserves for grant of bail. He is behind the bars since his arrest. The offences do not fall within prohibitory clause of Section 497 Cr.P.C., as such, he is entitled for concession of bail

5. The prosecution vehemently opposed the grant of bail for the reasons that he being principal accused must know the offence committed by his subordinate under his nose, therefore, he merely for his official capacity could not get himself relieved from such allegations. Prosecution has a sound material against him, he approved the allotments of plot of Federal Government Employees Housing Foundation, which is violation of rules, as such, procedure adopted was quite irregular, hence, the petitioner does not deserve for grant of bail.

6. I have heard the learned counsel for the parties, perused the record carefully as well as documents attached with the bail petition and the order earlier passed in favour of Naveed-ul-Haq.

7. Prosecution itself admitted that there is no apprehension of abscondance of the petitioner, who is otherwise Officer of Grade-21. The prosecution has only concentrated that in case he is released on bail, he will temper the prosecution evidence by using his influence. From the record it reveals that he only approved the allotment of plots of FGEHF, which hardly could be considered irregularity in following the rules, but could not constitute the offence for allotment of 22 plots, for which specific allegations have been levelled against Naveed-ul-Haq, who has already been granted bail by this Court. In this regard, specifically when prosecution is invited to show the said fictitious balloting with regard to 22 names of different officials as alleged but they failed to produce any such record.

8. Mr. Jahangir Khan Jadoon, learned Standing Counsel while replying to the query raised by the Court argued that such record will be produced before the concerned Trial Court. At this verge, they are still sorting out the record and full material has not been secured.

9. It is strange enough to note that despite inquiry conducted for a longest period the record could not be seized, which has been made basis for registration of

the FIR lodged on 26.4.2013. Till today investigation is going on, but such excuse is totally not understandable as to why they have not secured the very important record. There might be some record available to the prosecution but avoiding to produce such record before the Court creates doubts in the mind. However, case of the prosecution is resting upon the documentary evidence secured by the prosecution. Therefore, I have been fortified with the famous pronouncement reported in **1996 SCMR 1132 (Saeed Ahmed Vs. The State)**, in this regard. Moreover, the petitioner being a civil servant of Grade-21, not likely to abscond as he is ready to furnish requisite surety in case he is released on bail.

10. Therefore, under these circumstances, I am of the confirm view that case of the prosecution, as they built, suffers from such deficiencies as observed above to create room for the accused for grant of bail, which falls under subsection 2 of Section 497 Cr.P.C. as a case of further inquiry, which entitles him for the grant of post arrest bail. As such, he is ordered to be released on bail subject to furnish surety bonds in the sum of Rs.10,00,000/- (Rupees ten lacs only), with two sureties in the like amount to the satisfaction of the learned Trial Court.

(NOOR-UL-HAQ N. QURESHI)
JUDGE