

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

**Crl. Misc. No.187-B/2020**

Muhammad Imran

*versus*

The State

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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31.03.2020

Raja Waqas Abid, Advocate for petitioner.

Barrister Muhammad Mumtaz Ali, AAG.

Kashif Alvi, S.I.

Nadeem Zafar, DD, AHTC.

**MOHSIN AKHTAR KAYANI, J:** Through this criminal miscellaneous petition, the petitioner has applied for post arrest bail in case FIR No.7, dated 07.01.2020, under Section 6 Passport Act, 1974 read with Sections 420, 468, 471, 109 PPC and Section 18/22 of Emigration Ordinance, 1979, Police Station FIA (AHTC), Islamabad.

2. Brief facts as referred in the instant FIR lodged on the complaint of Assistant Regional Security Officer, US Embassy, Islamabad are that one Hamza Malik has applied for US Visa from US Embassy, Islamabad and during the course of verification of the documents, it was found that the Malaysian Visa along with all arrival and departure stamps on his passports bearing No.DH0764021 and DH0764022 are fake. During the course of interview with the officer of embassy, the said Hamza Malik admitted that he had paid amount to an agent namely Suleman in Lahore for those stamps and visa.

3. Learned counsel for petitioner contends that petitioner has falsely been implicated in this case and as such, he has been involved on the statement of co-accused person, whereas there is no direct evidence of preparation of fake

stamps and putting the same on the passport of the co-accused Hamza Malik; that the co-accused Hamza Malik was granted post arrest bail by the learned Special Court, vide order dated 29.01.2020, and even the investigation has been completed and petitioner is not charged with the offence of Emigration Ordinance, 1979 and Passport Act, 1974, rather he has been allegedly involved to the extent of preparation and counterfeiting of stamps on the passport, which does not fall within the prohibitory clause of Section 497 Cr.P.C.

4. Conversely, learned Additional Attorney General along with Investigating Officer of this case contend that the petitioner has been arrested on the statement of co-accused and during the forensic analysis of his mobile phone different images of cheques, CNIC, passports, visas, agreements and bank statements were recovered and as such, the petitioner is involved in this fraud.

5. Arguments heard, record perused.

6. Tentative assessment of record reveals that the petitioner has been nominated in the case FIR No.7, dated 07.01.2020, under Section 6 Passport Act, 1974 read with Sections 420, 468, 471, 109 PPC and Section 18/22 of Emigration Ordinance, 1979, Police Station FIA (AHTC), Islamabad, which has been lodged on the complaint of Assistant Regional Security Officer of US Embassy, Islamabad on the allegations that Hamza Malik/co-accused had applied for US Visa and during the course of interview and verification, all the visa stamps of Malaysia, including the arrival and departure on his passports bearing No.DH0764021 and DH0764022 were found to be fake.

7. The record further reveals that petitioner has been nominated on the statement of Hamza Malik/co-accused, who alleged that all these fake visa stamps have been

managed by the petitioner against consideration of Rs.100,000/-.

8. The status of statement of co-accused before the police is inadmissible in evidence and as such, the statement of co-accused could not be used as evidence against another accused in view of Article 38 of the Qanun-e-Shahadat Order, 1984, even otherwise, this aspect has also been considered and appreciated by the apex Court in cases reported as 2013 SCMR 669 (Raja Muhammad Younas vs. The State) and PLD 2014 SC 760 (Alam Zeb vs. The State).

9. I have confronted the Investigating Officer of this case, who has brought the forensic report of the mobile phone recovered from the present petitioner, which reveals different images containing the bank statements, cheques, passports, visas and agreements. All these materials have to be justified during the course of trial as the petitioner has taken the stance during the course of investigation that all these materials have been provided by another co-accused person namely Suleman, who was also arrested in the same case and the last accused notified by the Investigating Officer as agent is namely "Paa" (unidentified), therefore, all these aspects create a ground of further inquiry in terms of Section 497(2) Cr.P.C. Even otherwise, the offence with which the petitioner has been charged i.e. Sections 420, 468, 471, 109 PPC, does not fall within the prohibitory clause of Section 497 Cr.P.C., whereas the offences relating to Section 6 of Passport Act, 1974 and Sections 18/22 of the Emigration Ordinance, 1979 require recording of evidence, therefore, in this backdrop, I have also considered the cases reported as 2017 P.Cr.LJ 1017 Peshawar (Haji Faqir Khan vs. The State) and 2017 YLR 2458 Peshawar (Rehman Ullah vs. The State), wherein it has been held that in presence of two sentences, the lesser punishment

would be considered by the court for the purpose of grant of bail.

10. Keeping in view the above position, the criminal miscellaneous petition for post arrest bail is hereby **ALLOWED**. The petitioner is admitted to post arrest bail subject to furnishing of bail bonds in the sum of Rs.200,000/- with one local surety in the like amount to the satisfaction of the learned Trial Court or to deposit cash surety in the like amount in the account of learned trial Court.

**MOHSIN AKHTAR KAYANI**  
JUDGE

Khalid Z.