

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.925-B/2019
Zairov Pervaiz
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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04.07.2019

Mr. Misbah Saeed Kiyani, Advocate for the petitioner
Mr. Nadeem Khan, learned Assistant Attorney-General with Talat A.S.I.

Through the instant criminal miscellaneous application, the petitioner, Zairov Pervaiz S/o Shabbir, seeks post-arrest bail in case F.I.R. No.67, dated 12.02.2018, under Section 14 of the Foreigner Act, 1946 ("the 1946 Act") registered at Police Station Golra Sharif, Islamabad. Furthermore, the petitioner seeks a direction to respondent No.2 (Ministry of Interior, Islamabad) to extend his visa and to waive off the overstay charges due to expiry of visa.

2. Earlier the petitioner's post-arrest bail petitions were dismissed by the learned Courts below, vide orders dated 31.10.2018 and 23.11.2018. Thereafter, the petitioner filed the instant petition for post-arrest bail.

3. Learned counsel for the accused/petitioner submitted that the petitioner has falsely been implicated in this case with *malafide* intentions and ulterior motives; that the petitioner did not commit the alleged offence; that the petitioner intends to extend his visa and for that purpose, he seeks conditional bail for a period of one and a half month; that from the contents of the FIR, the alleged

offences are not attracted in the petitioner's case; that the offence alleged to have been committed by the petitioner does not fall within the ambit of the prohibitory clause of Section 497 of the Criminal Procedure Code, 1898 ("Cr.P.C."); and that the petitioner is in judicial custody since the date of his arrest i.e. 12.02.2018, and is not required for any further investigation. Learned counsel for the petitioner has prayed for the petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned Assistant Attorney-General vehemently opposed the petition by stating that the petitioner is nominated in the FIR; that the petitioner failed to produce visa or passport showing his stay in Pakistan to be valid on 12.02.2018 when he was arrested by the local police; and that the visa produced by the petitioner before the Court of learned Sessions Judge was found to be fake when it was sent for verification to the quarters concerned. Learned Assistant Attorney-General has prayed for the petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance.

6. The prosecution story as alleged in the F.I.R lodged on the complaint of Tallat Mehmood A.S.I. is that on 12.02.2018, at about 6:00 p.m., he along with Iftikhar Alam A.S.I. were on patrol duty at Sector E-11/2, Islamabad, when the police party, on suspicion, stopped the petitioner and asked to show his identity. Upon interrogation, the petitioner informed that he was a national of *Azerbaijan*. The petitioner was asked to provide visa or passport, authorizing

him to stay in Pakistan. He failed to produce any documentary evidence showing his stay to be valid, and as a result, he was arrested and was charged for an offence punishable under Section 14 of the Foreigners Act, 1946. Accordingly, the FIR in question had been registered against him.

7. The record shows that on 12.02.2018 at about 6:00 p.m., the petitioner was arrested from Sector E-11/2, Islamabad. The petitioner was asked by the complainant to provide visa / passport or any document, showing his stay to be valid in Pakistan, but he failed to produce the same. Perusal of the order dated 23.11.2018, passed by the learned Sessions Judge, Islamabad, shows that the visa produced by the petitioner was sent to concerned quarters for verification. However, the same was found fake. This is not a case of the petitioner that he was arrested due to an expired visa, but of a fake visa produced by him. The visa produced by the petitioner before the learned Sessions Judge, was found fake on verification. In my view this is a fit case to decline bail as was done by the learned Sessions Judge as well as learned Judicial Magistrate in the petitioner's case.

8. Learned counsel for the petitioner has laid much emphasis on the point that conditional bail may be granted to the petitioner so that he could extend his visa. Suffice it to observe that the relief of conditional bail for specified period cannot be given to the petitioner for the simple reason that the visa produced by him has already been found to be fake. Therefore, there arises no question to enlarge him on bail as the petitioner appears to be an illegal immigrant.

Even otherwise, while deciding a bail petition, this Court cannot give a direction to the Ministry of Interior, Islamabad, to extend the petitioner's visa as prayed for by him through the petition in hand.

9. In view of the above, the petitioner is not entitled to the concession of post-arrest bail and as a result, the bail petition is dismissed. The petitioner shall be at liberty to apply for bail afresh in the event his application for grant/extension of visa is allowed by the competent authority.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*