

HCJD/C-121  
**ORDER SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**CRL MISC. NO.500-B/2014**

**MIRZA SAEED AKHTAR BAIG**  
*VERSUS*  
**THE STATE**

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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21-08-2014 Sardar Abdul Raziq Khan Advocate for Petitioner.  
Malik Zahoor Awan Awan, Standing Counsel.  
Mr Tehseen S.I. with record.

The petitioner Mirza Saeed Akhtar Baig son of Muhammad Sadiq has sought post arrest bail in case, F.I.R. No.138, dated 06-04-2014, registered under Section 420, 468, 471, 467, 419, 34 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Aabpara, Islamabad.

2. Brief facts are that on complaint of Mansoor Ahmed S.I./C.I.A. the above said F.I.R. had been registered, wherein it is alleged that he received spy information that a gang of people is engaged in preparing bogus documents/files of *Model Village Kurri Shehr* at Liberty Market Aabpara, Sector G-6, and Sitara Market, Sector G-7 Markaz Islamabad, upon which raiding party was constituted and raid was conducted. As a result whereof, Waheed Anwar was arrested from Aabpara Market and bogus files being prepared by him alongwith other articles were recovered and taken into possession. Hence, this F.I.R.

3. Learned counsel for the petitioner contended that present petitioner was not nominated in the FIR; the petitioner was implicated on the statement of accused Waheed Anwar and, thereafter arrested on 14-07-2014; there is no evidence or material available on the record connecting the petitioner with the commission of the offence; the C.I.A. police have no lawful authority to conduct raid and register the case; the offences under Sections 467, 419, 468 & 471 PPC are not made out to the extent of the petitioner, whereas, Section 420 PPC is bailable and does not fall within the prohibitory clause contained in Section 497 Cr.P.C.; the petitioner is previously non-convict; that the case of petitioner is one of further inquiry; investigation is complete and the petitioner is no more required for the purposes of investigation; petitioner remained on physical remand for seven days but no incriminating evidence is available on record to the extent of petitioner; there is no evidence or material on record to the extent of the petitioner except the statement of the main accused; even statement of main accused is hit by Article 38 of the Qanoon-e-Shahadat Order, 1984, in this regard reliance has been placed on 2013 S.C.M.R 669; no affectee has come forward nor any such statement has been recorded during investigation; hence he prays for enlarging the petitioner on bail.

4. On the other hand, learned Standing Counsel contends; it is correct that the petitioner was implicated and thereafter arrested on the basis of statement made by the main accused during the period of remand; states that the petitioner made a statement recorded in zimni No.27, dated 17-07-2014 that he had dealt with files relating to '*Model Village Kurri Shehr*', however, admits that no one has come forward to

give any evidence to the extent of the petitioner; admits that in the light of statement recorded in zimni No.27, dated 17-07-2014, only Section 420 of PPC is attracted to the extent of the petitioner, which offence falls in the non-prohibitory clause; admits that in the light of the investigation and the statement of the petitioner, other offences mentioned in the FIR are not attracted to his extent; lastly states that the Challan has been submitted on 01-08-2014.

5. After giving careful consideration to the arguments of the learned counsels, finding of this Court are as follows:

6. It is noted that the only material implicating the petitioner is the statement of the co-accused. Admittedly, no evidence or incriminating material is available on record to the extent of the petitioner. It has been held by the Honourable Supreme Court in the case of *'Raja Muhammad Yunus Vs. The State'* (2013 S.C.M.R. 669), that in terms of Article 38 of the Qanoon-e-Shahadat Order, 1984, "*admission of an accused before police cannot be used as evidence against the co-accused*". Moreover, it is admitted that even on the basis of the statement of the petitioner, recorded in *Zimni* No.27, dated 17-07-2014, only Section 420 PPC is attracted to his extent. Other offences mentioned in the FIR not being relevant. Section 420 PPC falls under the non-prohibitory clause of Section 497 Cr.P.C. Whether the present petitioner has a role in the 38 files recovered from the co-accused, needs further probe. His continued custody is not likely to serve any beneficial purpose at this stage, whereas, admittedly, the only offence which is attracted to his extent is Section 420 PPC, falling in the non-prohibitory clause of Section 497 Cr.P.C.

7. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of '*Zafar Iqbal Versus Muhammad Anwar and others*' (2009 SCMR 1488), a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

- i) Where there is likelihood of abscondance of the accused;
- ii) Where there is apprehension of the accused tampering with the prosecution evidence;
- iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- iv) Where the accused is a previous convict.

8. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of Subhan Khan Versus the State (2002 SCMR 1797) and Tariq Bashir and five other vs The State (PLD 1995 SC 34). The said principles have been consistently followed. Reliance may also be placed on the case of Riaz Jafar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR 1708).

9. This Court is, therefore, of the view that the petitioner is entitled to bail.

10. In the circumstances as mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

Needless to mention that this is tentative assessment, which shall not affect trial of this case in any manner.

**(ATHAR MINALLAH)**  
JUDGE

Approved for reporting.

**JUDGE**

Luqman\*