

Form No: HCJD/C-121.
JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 975-B of 2018

Muhammad Faisal

Vs

The State, Etc.

PETITIONER BY: Raja Khurram Shahzad, Advocate.
RESPONDENT BY: Syed Muhammad Tayyab, Dy. Attorney General.
Mr. Qaisar Masood, Addl. Director Law/FIA.
Ms. Humaira Aslam, S.I/I.O/FIA
Date of hearing: **03-01-2019.**

ATHAR MINALLAH, J.- The petitioner namely,
Muhammad Faisal through this petition has sought post arrest bail.

2. The petitioner was arrested pursuant to registration of a criminal case i.e. FIR No.07, dated 24-11-2018, at Police Station Federal Investigation Agency, Cyber Crime Reporting Centre, Islamabad (hereinafter referred to as the "**FIA**"). The said FIR was registered under sections 3, 5 and 14 of the Prevention of Electronic Crime Act, 2016 (hereinafter referred to as the "**Act of 2016**") read with sections 409, 419, 420 and 109 of the Pakistan Penal Code, 1860 (hereinafter referred to as the "**PPC**").

3. The facts, in brief, are that pursuant to written complaint filed by Muhammad Jameel s/o Muhammad Akram (hereinafter referred to as the "**Complainant**") and inquiry conducted by the FIA, the FIR was lodged. It has been alleged in the FIR that the petitioner alongwith others managed to withdraw

an amount of Rs.219,000/- from the bank account of the Complainant without any lawful authorization. It has been further alleged that out of the total amount, an amount of Rs.71,500/- got transferred to the bank account of the petitioner. Hence, the FIR.

4. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; the petitioner has no concern whatsoever with the alleged offences; the petitioner is innocent; investigations qua the petitioner have been completed and he is no more required for the purposes of further investigations; there is no chance of abscondance and tampering with the prosecution evidence; the petitioner is previously non-convict; the petitioner has no criminal history; the offences do not fall within the prohibitory clause of section 497 of Cr.P.C, except section 409 of PPC which is not attracted in case of the petitioner; the case against the petitioner is that of further probe; hence the learned counsel urges the petitioner to be released on bail.

5. On the other hand, the learned Deputy Attorney General appeared alongwith Ms Humaira Aslam, I.O / SI. They have opposed the grant of bail. It is contended that; the petitioner alongwith other co-accused while using identification data of Complainant illegally got access to his bank account and got transferred an amount of Rs.219,000/-; out of the total illegally transferred amount, an amount of Rs.72,000/- was transferred to the bank account of the petitioner; the petitioner himself went to the concerned Bank and withdrew the said amount through cheque

No.C-25621556; the petitioner is connected with the commission of offence; hence urges for dismissal of bail.

6. The learned counsels for the parties have been heard and record perused with their able assistance.

7. The offences included in the FIR are admittedly, of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. 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, grant 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"* reported as [2002 SCMR 1797] and *"Tariq Bashir and five others versus The State"* reported as

[PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of "*Riaz Jafar Natiq versus Muhammad Nadeem Dar and others*" reported as [2011 SCMR 1708].

9. Perusal of record shows that the offences mentioned in the FIR, except under section 409, of PPC do not fall within the prohibitory clause of section 497 of Cr.P.C. Whether or not offence under section 409 is attracted requires further probe because admittedly the petitioner at the time of commission of the alleged offence was neither a public servant nor a banker. The petitioner does not have criminal record. Report under section 173 of Cr.P.C. has not yet been submitted, therefore, conclusion of trial is not in sight. The prosecution has not been able to place any material on record which would bring the case of the petitioner within the exception to the general rule that in case of offences falling in non-prohibitory clause the grant of bail is to be considered favourably. Keeping the petitioner incarcerated in the present circumstances will not serve any useful purpose. This Court is, therefore, of the opinion that the petitioner is entitled to be released on bail.

10. It has been aptly observed by the august Supreme Court in the case of '*Manzoor and 4 others versus The State*' [PLD 1972 SC 81] as follows:-

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man

6-0

for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

11. 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. The petitioner will be at liberty to furnish surety in cash as per policy of this Court.

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

(CHIEF JUSTICE)

*Luqman Khan/**