

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.30-B of 2020
Musthaq Willium
Versus
The State and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.02.2020	Mir Muhammad Ghufraan Khurshid Imtiaz, Advocate for the petitioner Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General Ms. Saadia Noreen Malik, learned State Counsel with Zohaib Hassan Khan

Through the instant criminal miscellaneous petition, the petitioner, Musthaq William S/o Rehmat Masih, seeks post-arrest bail in case F.I.R. No.277, dated 12.09.2018, registered under sections 489-F P.P.C. and Sections 18/22 of the Emigration Ordinance, 1979, at Police Station F.I.A./AHTC, Islamabad.

2. Earlier the petitioner's post-arrest bail petition was dismissed by the learned Special Judge Central, Islamabad as well as this Court, vide orders dated 19.03.2019 and 06.05.2019, respectively.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case; that the F.I.R. in question has been lodged with a *malafide* intent as neither had the petitioner taken money from the complainants nor had any specific date or time as regards the payment has been mentioned in the F.I.R.; that from the contents of the F.I.R, the alleged offences under Sections 18/22 of the Emigration Ordinance, 1979, are not attracted; that earlier the petitioner's post arrest bail petition was dismissed by this Court on 06.05.2019; that while dismissing the petitioner's bail this Court had directed the trial Court to conclude the trial

expeditiously and preferably within a period of two months; and that despite the said direction the learned trial Court has not recorded the evidence of a single witness and as a result no progress in the trial has been made since 06.05.2019. Learned counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

4. Learned Deputy Attorney-General assisted by learned State Counsel opposed the bail petition and contended that the petitioner is nominated in the F.I.R. with the allegation that he along with his co-accused had deceitfully received an amount of Rs.50,00,000/- from the complainants (Suleman Akhtar and Muhammad Ramzan) on the pretext of sending them to Canada for employment; that subsequently, on the accused/petitioner's failure to send them abroad, the former returned an amount of Rs.90,000/- in cash whereas for the rest of the amount, co-accused Ashir Mushtaq issued two cheques amounting to Rs.25,10,000/- and Rs.24,10,000/- to the complainants which were dishonoured on presentation; and that the petitioner along his co-accused had deprived the complainants of their hard earned money under the garb of sending them abroad.

5. As regards the delay in the prosecution of the case, it is contended that the investigation of the case remained in the hands of different investigating officers and due to the proceedings against the absconding accused; and that the proceedings in the trial of the accused/petitioner are being conducted on a day to day basis before the learned trial Court. Learned Deputy Attorney-General has prayed for the bail petition to be dismissed.

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

7. Brief facts as narrated in the F.I.R. are that accused/petitioner while not being a licensed/authorized agent in connivance with the co-accused, Ashir Mushtaq, deceitfully took an amount of Rs.50,00,000/- and passport. The accused persons were alleged to have received the said amount as well as the passports in presence of witnesses namely, Ch. Muhammad Shehzad, Junaid Gul and Muhammad Rafique. Later, the accused persons failed to send the complainants abroad as promised. On the complainants' demand, an amount of Rs.90,000/- had been returned by the accused, while for the remaining amount, co-accused Aashir Muhstaq issued two cheques amounting to Rs.25,10,000/- and Rs.24,10,000/- to the complainants, which were dishonoured on presentation.

8. Perusal of the record shows that earlier the petitioner's post arrest bail was declined by this Court on merits vide order dated 06.05.2019 passed in Crl.Misc.No.214-B/2019. In the said order, the learned trial Court was directed to conclude the trial preferably within a period of two months from the date of receipt of the said order. Learned counsel for the petitioner has laid much emphasis on the ground that the petitioner is entitled to be released on bail due to non-compliance of the directions of this Court to conclude the trial within the specified period mentioned in the order dated 06.05.2019. The record shows that prior to the filing of the instant petition, the petitioner had sought bail after arrest on the similar ground of inordinate and unjustified delay in the initiation of trial before the

learned Special Judge Central, Islamabad, which was dismissed vide order dated 04.11.2019. While dismissing the said petition, it was observed that *"the investigation of the case remained in the hands of different I.Os, and a show cause was also issued to the concerned I.O. for submission of complete challan, which has been submitted today. Furthermore, it was observed that "as far as delay in the trial is concerned, admittedly the complete challan in the court has been filed by the prosecution today. As per prosecution, the challan could not be filed in court due to proceedings against the absconding accused and frequent change of I.Os."* The order dated 04.11.2019 shows that after the issuance of a show cause notice, the I.O. concerned furnished the complete *challan*. The justification put forth by the prosecution for the delay in filing the complete *challan* was due to frequent change of investigating officers as well as proceedings against the absconding accused. Such a justification in filing the complete *challan* resulted in the delay of the initiation of trial before the Court concerned, in my view, is not tenable and such ground is not attributable to accused by any stretch of imagination. Be that as it may, there is an inordinate or unjustified delay in the prosecution of a case amounting to an abuse of process of law entitling the petitioner to be enlarged on bail.

9. The Hon'ble Supreme Court of Pakistan in the case of Ahrar Muhammad (PLD 1974 Supreme Court 224), observed as follows:-

"It is true that the view of the Supreme Court has consistently been that mere delay by itself is not a sufficient ground for the granting of bail; but, at the same time it cannot be said that inordinate or unjustified delay in the prosecution of a case amounting to an abuse of process of law can never be taken into account as relevant ground for the granting of bail. If the delay is so inordinate or so

scandalous or so shocking as to amount clearly to an abuse of the process of law there can be no reason either in principle of law as to why it cannot be treated as a sufficient ground for the granting of bail."

10. In this view of the matter, the instant bail petition is **allowed** and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs.5,00,000/- with two sureties in the like amount to the satisfaction of the learned trial Court. The observations made herein above are tentative in nature and shall have no bearing on the merits of the case. The learned trial Court is directed to decide the case expeditiously. It is clarified that the observations made herein above are tentative in nature and the same shall not prejudice either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned trial Court unless exempted by the learned trial Court. In case, the petitioner fails to appear before the learned trial Court on any date of hearing, the bail shall stand cancelled.

11. Petition **allowed**. Bail **granted**.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*