

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

Criminal Misc. No. 35-B/ 2020
Hassan Ali Raja
Vs
The State, etc

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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12.02.2020	Petitioner Hassan Ali Raja on ad-interim bail with Qazi Adil Aziz, learned ASC, Mr. Tahir Hameed Khan, learned State Counsel, Mr. Arif Chaudhry, learned ASC for respondent No.2, Umer Hayat SI, PS Sihala and Sher Ahmad S.I. P.S. Bani Gala with record.
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Through this petition under section 498 read with section 435/439 Cr.P.C, petitioner {Hassan Ali Raja} seeks pre-arrest bail in case FIR No.43 dated 11.03.2017, under Section 406 PPC, registered at Police Station Banni Gala, Islamabad.

2. Precisely, facts relevant for disposal of instant petition are that complainant-respondent No.2 entered into a deal for purchase of a plot measuring 1-kanal 18-marlas situated at Kurri Road, Islamabad with the petitioner and paid sale consideration to the tune Rs.20,000,000/- {two crore} vide cheque dated 20.02.2017 but neither the plot was transferred in his name nor the amount received was returned to him. After the registration of FIR, petitioner resorted pre-arrest bail which was allowed by learned Additional

Sessions Judge Islamabad-East vide order dated 12.05.2017. Record annexed with the petition shows that petitioner became absent and after undergoing proceedings as per law, was declared proclaimed offender vide order dated 21.11.2017 by the learned Judicial Magistrate Section 30 Islamabad-East. It is matter of record that the complainant assailed bail granting order dated 12.05.2017 before this Court through criminal misc. 315-BC of 2017 and vide order dated 03.11.2017 his bail was cancelled by observing as under:-

“Respondent is not in attendance. Learned counsel for respondent in connected writ petition No.1122/2017 informed the Court that respondent has left the country and is in abroad, but his exact location and particulars are not available.

2. Since respondent is a proclaimed offender, he jumped over the concession of bail rather misuse the same. Despite specific direction, respondent failed to put appearance before the Court, therefore, instant petition is accepted and bail granted to the respondent is hereby cancelled. If bail has not been already cancelled by the learned Trial Court, same shall be presumed to be cancelled by the order of this Court.”

3. Learned counsel for the petitioner contends that abscondence of petitioner was neither intentional nor willful but was to save the lives of his family members and of his own from the hands of complainant, who then was Secretary to Prime Minister; that abscondence itself is no ground for refusal of bail; that case of the petitioner falls within the ambit of Section 497(2) Cr. PC which entitles him

for grant of bail; that petitioner had already joined the investigation and is ready to appear before the Court and nothing is to be recovered from the possession of present petitioner. Learned counsel fortified his submissions by placing reliance on case law cited as 2018 MLD 768 titled *Muhammad Jamil. Vs. Zahidullah alias Zohaib and 2 others*, 2012 MLD 574 [Sindh] titled *Suleman. Vs. The State*, PLD 1995 SC 34 titled *Tariq Bashir and 5 others. Vs. The State*, 2017 PCr.L.J 133 [Islamabad] titled *Muhammad Nawaz. Vs. SHO, Police Station Sabzi Mandi, Islamabad and others*.

4. Conversely, learned State Counsel assisted by learned counsel for complainant/respondent No.2, repelled the above submissions, *inter-alia* stating that petitioner is specifically named in the FIR; no malice or *malafide* has even been alleged on the part of police or complainant; that the petitioner has failed to substantiate his excuse of absence through any document. It is further asserted that the contents of FIR and the documents annexed with report under Section 173 Cr.PC do attract section 406 PPC. Learned counsel added that in presence of specific admission regarding alleged sale transaction, receipt of part sale consideration and non-transfer of land pursuant to the sale agreement, ipso facto, proves ill intention of the petitioner to deprive the complainant of his hard earned money. Therefore, he cannot be held entitled to the concession of bail particularly when he jumped over the concession and had been keeping himself away from the process of law and was declared a proclaimed offender. Reliance is placed upon case

laws reported as *PLD 1985 SC 402 titled Awal Gul. Vs. Zawar Khan and others (double murder case), PLJ 1981 SC 171 titled Rao Qadeer Khan. Vs. The State (repeated applications for anticipatory bail), 1985 SCMR 1166 titled Akhtar Ali. Vs. Azhar Ali Shah and others (murder case), 2000 MLD 1718 [Supreme Court (A&K)] titled Alam Zaib. Vs. Haji Muhammad Ramzan and another (murder case), 2002 PCr.L.J 1054 [Peshawar] titled Khial Gul and another Vs. The State and another (murder case), 2013 YLR 625 (Islamabad) titled Syed Amir Jalali. Vs. The State and another (489-F PPC), 1999 YLR 2680 [Lahore] titled Syed Ghulam Abbas Shah. Vs. The State (420, 468, 471, 409 PPC) and 2004 MLD 1095 [Lahore] titled Ch. Haq Nawaz. Vs. Haq Nawaz Dhodi and other (murder case).* The case law referred do not extend any help to the complainant due to having distinct question of law and facts.

5. In respect of last submission, learned counsel for the petitioner drawn the attention to the documents placed on file through Cr. Misc.34/2020 which includes copy of Judgment dated 03.02.2020 whereby, order regarding declaration of the petitioner as proclaimed offender in second FIR No.54/2017 of P.S. Margalla, Islamabad was set-aside. Learned counsel added that petitioner undertakes to surrender to the court of competent jurisdiction and to appear as and when directed.

6. Heard the learned counsel for the parties and perused the record with their able assistance.

7. The occurrence in the case allegedly took place on 20.02.2017 when the complainant paid

Rs.20,000,000/- vide cheque and FIR No.43 was registered on 11.03.2017 under section 406 PPC, at P.S. Banni Gala, Islamabad. The amount was allegedly given to the petitioner/accused pursuant to a deal regarding purchase of plot measuring 1-kanal 18-marlas situated at Kurri Road, Islamabad. The petitioner/accused was granted pre-arrest bail in case FIR No.43/2017 by learned ASJ Islamabad-East vide order dated 12.05.2017. After submission of challan, petitioner/accused became absent and after undergoing proceedings as per law, he was declared proclaimed offender vide order dated 21.11.2017 by the learned Judicial Magistrate Section 30 Islamabad-East. The complainant/respondent No.2 filed bail cancellation petition {Criminal Misc. 315-BC of 2017} in FIR No.43/2017 and vide order dated 03.11.2017 {reproduced in para-2 above} his bail was cancelled. The complainant also got registered FIR No.54 dated 06.03.2017 under section 406 PPC, P.S. Margalla, Islamabad. In this FIR, petitioner was granted pre-arrest bail by learned ASJ-III, Islamabad-West vide order dated 12.04.2017. Subsequently, petitioner/accused was declared proclaimed offender by learned Judicial Magistrate vide order dated 14.12.2019 in the said FIR. Petitioner/accused assailed the said order through revision petition which was allowed by learned ASJ Islamabad-West vide order dated 03.02.2020 and the impugned order regarding declaration as proclaimed offender was set-aside and

petitioner was directed to appear before the learned Trial Court.

8. Criminal jurisprudence lays emphasis to examine every criminal case in its own peculiar facts and circumstances. The law is to be followed, in its true import and not at the whims or desire of any of the parties. The events, as put forth by the parties, do lead to draw inference that on merits, case of the petitioner, is one of further inquiry, for the reasons that complainant got registered two FIRs; one at-hand i.e. F.I.R. No.43 dated 11.03.2017 while the other bearing No.54, dated 06.03.2017 at Police Station Margalla Islamabad; FIR No. 54, lodged prior in-time, did not contain the description of alleged mischief, reported through the present FIR regarding occurrence of February 2017 while the alleged transaction i.e. sale-purchase does not, *ipso facto*, constitutes entrustment and departure thereof a criminal breach of trust. Learned counsel for the complainant during the arguments contended that moveable property of the complainant had been converted into own use by petitioner, at this learned counsel for petitioner is of the view, that if argument of learned counsel for complainant is admitted the offence becomes under Section 403 PPC, which is bailable. Whatever it may be, it is very much clear that whether it is Section 420 PPC, as observed by the two learned ASJs or Sections 406 or 403 PPC as argued, matter is of civil nature. By any yardstick,

when examined, the case of the petitioner becomes one of further inquiry.

9. Next comes the point that whether extraordinary concession of pre-arrest bail cannot be extended to an accused, who had been keeping himself away from the process of law; declared a Proclaimed Offender and jumped the concession of bail. It is an offence not falling within the ambit of prohibitory clause; even the offence alleged also does not fall within the category of heinous crimes; petitioner is not a previous convict; case appears to be one of further inquiry and by holding so, petitioner was allowed pre-arrest bail, that too is a factor which, *prima facie*, supports the version of the petitioner regarding his false involvement and the fact that a civil nature *lis* had been attempted to be converted into criminal to settle the score. The allegation of jumping the concession of bail without repetition and keeping himself away from the process of law, in comparison with the facts narrated above, brings the pendulum down to the petitioner.

10. The objection that in presence of bail cancellation order passed by this Court dated 3.11.2017, petitioner cannot ask for to avail extraordinary concession of pre arrest appears to be somewhat harsh because not only the referred order was passed at his back but at the relevant time he was not a Proclaimed Offender, as was observed on 03.11.2017 rather he was subsequently declared as proclaimed offender on 21.11.2017.

11. There should be some difference between proclaimed offender, who had remained subject of raids, exercise to trace whereabouts, search by investigating agency and finally caught, arrested due to efforts by the police or either during proceedings on the direction of the Court, and one who himself **voluntarily surrenders before the Court of law, put himself to the mercy of the Court, seeks protection of the Court and present himself to seek assistance of the Court/access to justice.** It amounts to denial an individual to access to justice if some benefit is not extended to the latter. **In response to his volunteer act as compared to the forceful arrest by the police/agency.** He has placed/put confidence upon the administration of Criminal Justice System. **This Court believes that one who wants to avail protection of criminal justice system, he should not be discouraged and penalized for his good deed because finally the matter is to be dealt with by the Court of competent jurisdiction on merits.**

12. Section 406 PPC does not fall within the ambit of prohibitory clause and in the offences which are not included in the ambit of prohibitory clause grant of bail is a rule and refusal is an exception.

13. When contents of FIR are examined and the other material available on record, it appears that offence could be in the nature of Section 403 PPC or Section 420 PPC which are bailable and in such like cases bail is granted as matter of right and above all one thing becomes clear that case of the petitioner in

that eventuality becomes one of further inquiry and when any petitioner succeeds to prove his case in the purview of further inquiry then he is entitled for bail as a matter of right and in that eventuality even to remain proclaimed offender of said accused, does not disentitle him from the bail because when there is a context between further inquiry and the proclaimed offender for the purpose of grant of bail, then element of proclaimed offender will give way to the fact of further inquiry, bail being matter of right. In this respect I am benefited by the *Judgment of the Hon'ble Apex Court cited as Ikram ul Haq. Vs. Raja Naveed Sabir, etc {2012 SCMR 1273}* wherein it is held that:-

"It has vehemently been argued by the learned counsel for the petitioner that respondent no.1 had remained a fugitive from law and had been declared a proclaimed offender and, thus, he was not entitled to be extended the concession of bail. We have, however, remained unable to subscribe to this submission of the learned counsel for the petitioner because the law is by now settled that in a case calling for further inquiry into the guilt of a accused person bail is to be allowed to him as a matter of right and not by way of grace or concession. Bail is sometimes refused to an accused person on account of his absconsion but such refusal of bail proceeds primarily upon a question of propriety. It goes without saying that whenever a question of propriety is confronted with a question of right the latter must prevail."

14. The bail could not be withheld merely on the ground that the accused remained a fugitive from law because that is only a matter of propriety. Reliance in this respect is made to *PLD 2012 (SC) 222, Qamar alias Mitho case*. It was held that:-

"It has vehemently been argued by the learned Additional Prosecutor General, Punjab appearing for the state that the petitioner had remained a proclaimed offender for a period of about four years and, thus, he is not entitled to any indulgence in the matter of bail. We have, however, not felt persuaded to agree with the learned Additional Prosecutor General in this regard. It has already been held by this Court in the cases of Ibrahim. Vs Hayaat Gul and others {1985 SCMR 382} & Muhammad Sadiq. Vs. Sadiq and others {PLD 1985 SC 182} that in a case calling for further inquiry into a guilt of accused person, bail is to be allowed to him as of right and such right cannot be refused to him merely on account of his alleged abscondence which is factor relevant only to propriety."

15. In view of above, instant criminal misc. is allowed, petitioner Hassan Ali Raja is admitted to pre-arrest bail subject to furnishing of fresh bail bonds in the sum of Rs.200,000/- (rupees two hundred thousands) to the satisfaction of learned Trial Court. The petitioner is directed to join the proceedings of the Court of competent jurisdiction where report under Section 173 Cr. PC had been submitted against him as per law.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail

(Approved for reporting)