

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

Criminal Misc. No. 710-B/ 2020  
Waqar Ahmed Awan  
Vs  
The State, etc

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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08.06.2020	Petitioner (Waqar Ahmed Awan) in person with Ms. Arooj Zaib Abbasi, Advocate. Ch. Muhammad Tahir Mehmood, AAG, Naeem Khan Niazi, Inspector FIA/CCC, Islamabad.
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Through the instant petition, petitioner (Waqar Ahmed Awan) has prayed for pre-arrest bail in case FIR No.01 dated 17.02.2020, under Sections 420, 468, 471, 109 PPC read with 5(2) 47 of PCA, Police Station FIA Corporate Crime Circle, Islamabad.

2. The petitioner applied for post arrest bail to the learned Special Judge Central, Islamabad which was rejected vide order dated 02.02.2020, thereafter, he moved to this Court through criminal misc. No.212-B/2020, however, during the pendency of said petition, the petitioner was released pursuant to order dated 20.03.2020 passed by the Hon'ble Chief Justice of this Court, therefore, on 31.03.2020, said petition was dismissed having become infructuous. Thereafter the directions of the Hon'ble Supreme Court of Pakistan on the subject, petitioner apprehends arrest and applied for bail before arrest.

3. Learned counsel for the petitioner contends that offences under sections 420 & 471 PPC are bailable while offence under section 468 PPC although is non-bailable but is

not covered within the ambit of prohibitory clause of section 497 of Cr.PC and is not attracted to the extent of petitioner.

Further contends that section 5(2) 47 of PCA is punishable with imprisonment which may extend to seven years, again said offence does not fall within the ambit of prohibitory clause of section 497 of Cr.PC; that final approval for payment is to be given by the Finance Wing and not by the petitioner; that the co-accused Zulfiqar Khan Jadoon and Khawaja Nasir Ali have already been granted post arrest bail by this Court.

Learned counsel further submits that there is inordinate delay of eight years in lodging of the FIR; that petitioner has unblemished service record in CDA and that petitioner has no criminal record, therefore, he is entitled to the concession of bail.

4. Conversely, learned State Counsel states that role of the petitioner was that in the year 2012, he being Deputy Director P-1, CDA initiated a note and without approval of the concerned authorities, transmitted to Assistant Finance Advisor for allocation of funds of Rs.4.4 Million; that huge public exchequer is involved in the case; that earlier post arrest bail petition filed by the petitioner was dismissed as withdrawn by this Court.

5. Arguments heard, record perused.

6. As per contents of FIR, upon enquiry by the FIA, it revealed that fake allocation of funds to the tune of Rs.4.4 Million with scanned signatures of Deputy Director General Finance and Member Finance CDA was prepared and

approved in 2012. The petitioner, at the relevant time was holding the portfolio of Deputy Director P-1 and initiated a note and forwarded the file directly to Assistant Finance Advisor Khawaja Nasir Ali without authorization of concerned authorities for allocation of funds. The letter of allocation of funds was issued by Assistant Finance Advisor Khawaja Nasir Ali on 02.10.2012 while the funds were utilized in the name of petty works under fake quotations and approval of the then Director CDA Zulfiqar Khan Jadoon who did not check the fake quotation and procedure adopted for allocation of these funds.

7. Admittedly, challan has not yet been submitted. The material collected by the prosecution is silent as to whether any amount had been paid or received by the petitioner. Nothing has been recovered from his possession. As far as offences under Sections 420 & 471 PPC mentioned in the FIR are concerned, same are bailable. Apparently, at this stage, ingredients of Section 468 PPC are not attracted in the light of investigation conducted so far and as stated by the I.O, even not applicable to the extent of present petitioner while same is the position of section 5(2)47 of PCA, therefore, the matter has become one of further inquiry and when case falls within the parameter of further inquiry, bail is to be granted as a matter of rule and denial is an exception. Reliance is placed upon case laws reported as Tariq Bashir Vs The State (PLD 1995 SC 34) and Imtiaz Ahmad Vs The State (2010 MLD 1146).

8. The petitioner has almost 25 years of service on his credit. The I.O. has stated that throughout his service no allegation of like nature was alleged against him, therefore, previous service record of the petitioner is clean and unblemished.

9. The prosecution case is entirely based on documents and in such like eventuality there is no possibility of tampering with the evidence. In like offences bail was granted by the Hon'ble Supreme Court of Pakistan in case reported as 1996 SCMR 1132 by holding that:-

“The objection of the learned counsel regarding addition of section 409 PPC may carry some weight while considering the bail application. As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution.”

The dictum (*ibid*) was also made basis for grant of bail in another case by the Hon'ble Lahore High Court reported as 2016 PCr.LJ 202.

10. Moreover, co-accused having similar role have already been granted post-arrest bail by this Court, therefore, petitioner is also entitled to the concession of bail on the basis of rule of consistency.

11. In view of the above, case to the extent of present petitioner for granting of bail is made out. There is no chance that evidence will be destroyed or tampered by the petitioner. The challan has not yet been submitted, while the investigation has been completed and no purpose would be served to keep the petitioner in jail for indefinite period.

11. In view of above, instant criminal misc. petition is allowed, petitioner Waqar Ahmed Awan is admitted to pre-arrest bail subject to furnishing of fresh bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousands) to the satisfaction of learned Trial Court.

12. Needless to mention that above is only tentative assessment for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran