

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No.653/B of 2019

**Kashif Safdar
VS
The State & another.**

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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14.11.2019.	Raja Basharat Sultan, Advocate for the Petitioner. Raja Khalid Mehmood Khan, learned Deputy Attorney-General. Adeel Ahmed, SI, FIA.
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Through the instant petition, the petitioner namely Kashif Safdar s/o Muhammad Safdar seeks bail after arrest in case F.I.R. No.260/19, date 19.06.2019, for offence under Sections 18/22 EO, 6 PA, 109 P.P.C., P.S. F.I.A./AHTC, Islamabad.

2. The case of the prosecution against the petitioner is that on the complaint of respondent No.2, an F.I.R. was lodged, wherein it was alleged that the petitioner alongwith others obtained sum of Rs.1,10,00,000/- from the complainant and other persons for sending them abroad and procuring visa for them.

3. The petitioner applied for bail after arrest, which was dismissed by the Special Judge, vide order dated 19.08.2019.

4. Learned counsel for the petitioner, *inter-alia*, contended that the offence does not fall within the prohibitory clause inasmuch as the minimum punishment provided is fine; that during the physical remand no document was recovered; that the petitioner is behind bar for the last about five months; that no specific role has been attributed to the petitioner; that no exact date of commission of the offence has been mentioned. It was submitted that in the facts and circumstances, the case against the petitioner is one of further inquiry. Reliance was placed on "*Rehman Ullah Vs. The State and another*" **(2017 YLR 2458)**, "*Haji Faqir Khan Vs. The State and another*" **(2017 P Cr. L J 1017)**, "*Haji Zahoor Ahmed Vs. The State and another*" **(2013 YLR 2644)** and "*Muhammad Musa Khan Vs. Special Judge, Central, Rawalpindi and another*" **(PLD 2013 Islamabad 15)**.

5. Learned Deputy Attorney General, *inter-alia*, contended that there is an agreement between the petitioner and the complainant, whereby receipt of sum of the money is acknowledged; that in the investigation, the petitioner has been found guilty; that a report under Section 173 Cr.P.C has been filed.

6. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. The offences with which the petitioner has been imputed though carry a maximum of life imprisonment but also entail minimum punishment of fine. It is trite law that while deciding bail, the minimum punishment is to be seen by the Court. The fact that the minimum punishment is fine that takes the matter out of prohibitory clause and in such like cases grant of bail is a rule and refusal is an exception. Reliance is placed on case reported as "*Tariq Bashir vs. The State*" (**PLD 1995 SC 34**). Moreover, the exact mode of payment has not been mentioned in the F.I.R., nor the time and date of making the payment, even the date of occurrence has also not been specified. This makes the case against the petitioner one of further inquiry. Reliance is placed on cases reported as "*Muhammad Musa Khan Vs. Special Judge, Central, Rawalpindi and another*" (**PLD 2013 Islamabad 15**), "*Imran Younas Vs. The State and another*" (**2016 YLR 355**) and "*Rehman Ullah Vs. The State and another*" (**2017 YLR 2458**). The investigation stands completed

and the petitioner is no longer required for the same.

8. In view of the above, the instant petition is **allowed** and the petitioner is enlarged on bail after arrest in the abovementioned case subject to furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees Five Hundred Thousand Only) with one (01) surety in the like amount to the satisfaction of the learned Trial Court. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the learned Trial Court at the time of trial.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua