

ORDER SHEET  
ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**Criminal Misc. No. 637-B of 2021**

Mst. Mehwish Mumtaz

Versus

The State

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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06.	12.08.2021	Mr. Aamir Abbas Malik, Advocate for the petitioner alongwith petitioner. Syed Nazar Hussain Shah, learned Assistant Attorney General. Jamal Subhani, Assistant Director (legal), FIA Rehana Kausar, Inspector, FIA.
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Through the instant petition, the petitioner seeks bail before arrest in a case F.I.R. No. 04/20, dated 25.01.2021, offence under Sections 34, 109, 409, 419, 420, 468, 471 P.P.C read with 5(2) 47 of Prevention of Corruption Act, 1947, registered at Police Station F.I.A. Anti-Corruption Circle, Islamabad.

02. Earlier bail before arrest of the petitioner was dismissed vide order dated 25.06.2021, by the learned Judge Special

Court Central, Rawalpindi.

03. It is alleged that two real sisters of the petitioner/accused namely Kainat Mumtaz and Rimsha Mumtaz got themselves appointed in F.I.A as Sub-Inspectors by cheating, personation, forgery and unfair means, hence the instant FIR.

04. Learned counsel for the petitioner contends that the petitioner is not nominated in the FIR; she has got no concern with the commission of offence; the petitioner / accused is serving as ASI in the department of F.I.A.; no incriminating evidence is available against her; no recovery is to be effected from her possession and has prayed for the confirmation of bail before arrest.

05. Learned Assistant Attorney General assisted by Assistant Director (Legal), F.I.A has controverted the arguments advanced by learned counsel for the petitioner and stated that sufficient evidence is available against the petitioner/accused; she has committed a heinous crime; her custody is required for

collecting the material evidence, hence bail before arrest of the petitioner / accused is liable to be dismissed.

06. Arguments advanced by learned counsel for the petitioner, learned Assistant Attorney General and Assistant Director (Legal), F.I.A have been heard and record has been perused with their able assistance.

07. According to prosecution story, two real sisters of the petitioner namely Mst. Kainat Mumtaz and Mst. Rimsha Mumtaz applied for the post of Sub-Inspector in the department of F.I.A; they appeared in the test conducted by Open Testing Service (OTS); they were interviewed by one Additional Director General and two Directors of the F.I.A and after completion of all the legal and codal formalities they were appointed as Sub-Inspectors in F.I.A; they joined the department and were getting training in the training academy of F.I.A.

08. That in the meanwhile, a complaint was received on Prime Minister's, Pakistan

Citizen Portal by some unknown person who did not disclose his / her name and address and complained that all appointments in the F.I.A were made by cheating and forgery etc. Consequently, an inquiry was conducted and instant FIR was registered against the sisters of the petitioner.

09. The petitioner is not nominated in the FIR; she was implicated as an accused by supplementary statement on 27.05.2021 vide Daily Diary No. 35; the petitioner / accused is serving as Assistant Sub-Inspector in the department of F.I.A since last two years; during the period of her service, neither any complaint has been lodged nor any inquiry has been conducted against her.

10. It is alleged by the prosecution that the petitioner / accused helped her sisters in solving their papers in the OTS test center Government Degree College for Women, Rawalpindi.

11. As far as the Sections leveled in the FIR are concerned, there is no allegation of

mis-appropriation of the property, accepting or attempt to obtain any gratification, preparation of the forged documents or appearing in the test / papers for some other person. The only allegation is that the petitioner has helped her sisters in selecting the right and wrong options in the answer sheets in a test conducted for the appointment of Sub-Inspectors, in the examination center of Government Degree College for Women, Satellite Town, Rawalpindi, which constitutes an offence under Section 420 P.P.C.

12. It is admitted that all the proceedings have been initiated on the basis of an anonymous complaint; in this regard Section 4 of Federal Investigation Agency (Inquiries & Investigations) Rules, 2002, is reproduced as under:

***"Verification of complaints against public servants – The Deputy director or an officer above the rank of Deputy Director may initiate verification of a complaint in order to ascertain the identity of the complainant or informer and***

*genuineness of the complaint or information. No action shall be taken on any anonymous or pseudonymous complaint."*

13. The SOPs regarding the Verification, Enquiry Proceedings, etc. issued through letter No. FIA/P&C/SO/2020/2652-82 dated 04.11.2020, provide that:

*"Provision of CNIC number shall be a prerequisite and before entering into the CMU, verification of the CNIC of the complainant(s) shall be carried out through 'verisys'."*

14. Clauses 6 and 7 of the Standing Order of above mentioned SOPs state that:

**"6. Action on Anonymous Complaints:** *Anonymous complaints will be properly entered in the Complaint Management System (CMU) and submitted before the Zonal Director. No member of the ministerial staff would record any marginal note / observation on any anonymous application. Anonymous letters / applications must, invariably be filed.*

*However, if the information provided in the application is specific or likely to be useful in any*

*enquiry / case, already under process in Zone, it should be immediately brought to the notice of Regional Additional Director General FIA for information and necessary orders.*

**7. Action on Pseudonymous Complaints.** *If a complaint is found pseudonymous during verification, it may also be treated in the same way as enumerated in the case of anonymous complaint.”*

15. Assistant Director (Legal) F.I.A and I.O have not been able to convince this Court that how the proceedings on the basis of an anonymous complaint and in violation of the above mentioned law/SOPs were initiated and competent under the law.

16. Both the sisters of the petitioner / accused nominated in the FIR have completed all the legal and codal formalities; they have gone through the process of test, interview etc. and finally got appointed and were getting training in the training center of F.I.A; it is an important fact that interview of both the sisters of the petitioner/accused was conducted by one Additional Director

General and two Directors of F.I.A and both the alleged, illegal appointees were given maximum marks in interview but neither any investigation nor any statement of said officers of the F.I.A has been recorded by the Investigating Officer till to date.

17. During the pendency of instant bail petition, the specimen of hand writing and signatures of the petitioner have been obtained by I.O in the Court of learned Judicial Magistrate, Rawalpindi, which was sent to hand writing expert and report has been collected; the petitioner/accused has joined investigation; she was given a questionnaire by the I.O which has duly been responded by her; though I.O has stated that she needs custody of the petitioner/accused but unable to show that for what purpose she intends to get custody as almost all the incriminating evidence has been collected by her.

18. Hon'ble Supreme Court of Pakistan while grating/allowing bail before arrest in a



case titled as "**Shahzada Qaiser Arfat alias Qaiser Vs. The State, etc.**" (PLD **2021 SC 708**) has held as follows:

*"The power of the High Courts and the Courts of Sessions to grant pre-arrest bail, first and foremost, must be examined in the constitutional context of liberty, dignity, due process and fair trial. Pre-arrest bail is in the nature of a check on the police power to arrest a person. The non-availability of incriminating material against the accused or non-existence of a sufficient ground including a valid purpose for making arrest of the accused person in a case by the investigating officer would as a corollary be a ground for admitting the accused to pre-arrest bail, and vice versa. Reluctance of the courts in admitting the accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there is sufficient incriminating material available on record to connect the accused with the commission of the alleged offence and for what purpose his arrest and detention is required during investigation or trial of the case, and their insistence only on showing malafide on part of*

*the complainant or the police for granting pre-arrest bail does not appear to be correct, especially after recognition of the right to fair trial as a fundamental right under Article 10A of Constitution of Pakistan, 1973. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. This Court has, in many cases, granted pre-arrest bail to accused persons after finding that there are no reasonable grounds for believing their involvement in the commission of the alleged offences and has not required independent proof of malafide on part of the Police or the complainant before granting such relief. Despite non-availability of the incriminating material against the accused, his implication by the complainant and the insistence of the Police to arrest him are the circumstances which by themselves indicate the malafide on the part of the complainant and the Police, and the accused need not lead any other evidence to prove malafide on their part."*

19. In a case titled as **"Khair Muhammad and another Vs. The State through P.G. Punjab and another"** (2021 SCMR 130),

it has been held as follows:

*"The concept of pre-arrest bail is exceptional, it has to be exercised sparingly. The purpose behind is to save innocent persons from false allegations, trumped up charges and malicious prosecution at the end of complainant party. In the salutary judgment of this Court reported as "Meeran Bux v. The State and another" (PLD 1989 SC 347), the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon". It has further been held that "There is no denial to this fact that the petitioners are nominated in the crime report. According to the contents of the crime report, it is mentioned that the occurrence has taken place in the morning whereas the matter was reported to police at 10:50 a.m. Admittedly, the inter-se distance between the place of occurrence and police station is 08-KM. Inordinate delay qua time of occurrence and registration clearly reveals that possibility of deliberation and consultation cannot be ruled out".*

Hence the ad-interim bail granted to the

petitioner / accused was confirmed by the Hon'ble Supreme Court of Pakistan.

20. In a case titled as **"Khalil Ahmed Soomro and others Vs. The State" (PLD 2017 Supreme Court 730)**, while granting bail before arrest, it has been held that:

*"Although for grant of pre-arrest bail one of the pre conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive / solid evidence / materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide".*

21. Investigation in the case has almost been completed; the petitioner has joined the investigation and the case depends upon documentary evidence which has already been collected by the Investigating Officer. Reliance is placed upon cases reported as **2013 PCrLJ 649, 2005 YLR 3133, 2013**

**YLR 2265, 2012 YLR 2319 and 2011**

**SCMR 614**, wherein it is held that:

*"Where bail before arrest of the accused involved in the case of 420, 409, 109 PPC read with 5(2), 1947 of PCA have been confirmed on the grounds that the case depends upon the documentary evidence and there is no chance of tampering with the evidence, nothing incriminating material / recovery from the accused is to be effected and there is no chance of the absconsion of the petitioner / accused."*

22. At this stage, I am of the view that if the petitioner being female, serving ASI of F.I.A is sent behind the bars, will cause irreparable loss to her person, reputation and career.

23. For the reasons recorded above, this petition is **allowed** and ad-interim pre-arrest bail already granted to petitioner vide order dated 29.06.2021, is hereby **confirmed** subject to furnishing of fresh bail bonds in the sum of **Rs. 1,00,000/-** (One Hundred Thousand only) with one surety in the like amount to the satisfaction of learned trial

Court.

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

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Ahmed Sheikh

**APPROVED FOR REPORTING.**