

Form No: HCJD/C-121

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Misc. No. 908-B/2020.

Mirza Iftikhar Uddin

Versus

The State, etc.

Petitioner by : Mrs. Sarkar Abbas, Mr. Shabbir Ahmed Mirza and
Mr. Asim Mumtaz, Advocates.

Respondent by : Syed Muhammad Tayyab, DAG.
Barrister Awais Arshad and Barrister Kabir
Hashmi, Advocates for respondent no.2.
Raja Wajid, Inspector/I.O, FIA.

Date of Hearing : 20-08-2020.

ATHAR MINALLAH, C.J.- The petitioner, namely Mirza Iftikhar Uddin son of Mirza Bashir Ahmed was arrested pursuant to registration of a criminal case i.e. FIR no. 03/2020, dated 29.06.2020, registered at Police Station FIA, CTW, Islamabad (hereinafter referred to as the "**FIR**"). The FIR has been registered alleging commission of offences under sections 34, 500, 505, 506 of the Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") read with section 20 of the Prevention of Electronic Crimes Act, 2016. The offence under section 7 of the Anti-Terrorism Act, 1997 has also been invoked.

2. The petitioner through this petition has sought post arrest bail. The allegations against the petitioner are regarding uploading of

objectionable material. It is alleged that he had attempted to incite violence against a sitting Hon'ble Judge of the august Supreme Court and thus putting his life to risk. We have been informed that the contempt proceedings are also pending against the petitioner before the august Supreme Court for uploading material on the social media, which tends to bring the authority of the courts and the administration of justice into disrespect and disrepute. The prosecution admits that offences, except under section 7 of the Anti-Terrorism Act, 1997, fall within the ambit of the non prohibitory clause.

3. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of '*Zafar Iqbal Versus Muhammad Anwar and others*' (2009 SCMR 1488), a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

- i) Where there is likelihood of abscondance of the accused;
- ii) Where there is apprehension of the accused tampering with the prosecution evidence;
- ii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- v) Where the accused is a previous convict.

4. The question whether the offence under section 7 of the Anti-Terrorism Act, 1997 is attracted in the facts and circumstances of the case in hand in the light of the law laid down by the august Supreme Court in the case titled "*Ghulam Hussain and others vs. The State and others*" [PLD 2020 S.C 61] requires further probe. Likewise whether offences relating to defamation are attracted having regard to the principles enunciated in the case titled "*Mir Shakeel ur Rehman and others vs. Yahya Bakhtiar and others*" [PLD 2010 S.C 612] also needs further probe. The petitioner claims to be a religious scholar but regrettably his conduct is, prima facie, abhorrent and detestable. He appears to have, prima facie, attempted to incite violence against a sitting Hon'ble Judge of the apex Court besides bringing the courts into disrepute. Nonetheless, we are mindful of the fact that the allegations against the petitioner are in relation to a sitting Hon'ble Judge of the august Supreme Court. The courts are always faced with a daunting challenge to be seen as conducting a fair trial, where the criminal charge involves allegations against an accused which relate to Hon'ble Judges. In such an eventuality even perception of bias could prejudice a fair trial. This Court in judgment reported as "*Muhammad Shafique Butt and another vs. The State and others*" [2015 YLR 877] has highlighted the duty of a court in such like circumstances. The investigations against the petitioner have been completed and he is no more required to be incarcerated for the purposes thereof. His incarceration would not serve any useful purpose and denying bail in the circumstances would amount to punishing him before conclusion of the trial. There is nothing on record to show that if the concession of bail is extended the petitioner may abscond.

5. We are, therefore, satisfied that the petitioner is entitled to extension of concession of bail. This petition is ***allowed*** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.1,000,000/- (Rupees one million) with one surety in the like amount to the satisfaction of the learned trial court. It is noted that the concession of bail granted through this order will stand recalled if the petitioner repeats the acts which have been alleged in the FIR or that objectionable material is uploaded on the social media or made public through any other means.

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

(AAMER FAROOQ)
JUDGE

(CHIEF ~~JUSTICE~~)

Saeed.