

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

Criminal Miscellaneous No.41-B/2020

Bilal Waseem
Vs.
The State and another

Petitioner By: Aamir Abbas Malik, Advocate.
Respondent No.2 By: Barrister Umer Aslam, Advocate.
State By: Mr. Sadaqat Ali Jahangir, State counsel.
Kashif, S.I, F.I.A.

Date of Hearing: 03.02.2020.

GHULAM AZAM QAMBRANI I: The petitioner namely Bilal Waseem seeks post arrest bail in F.I.R No.01/2020 dated 01.01.2020 under Section 409, 420, 468 & 471 P.P.C registered with Police Station F.I.A/Commercial Banks Circle, Islamabad.

2. Briefly stated, prosecution case is that on 01.01.2020, one Farhad Wahid, Branch Manager, ABL, Diplomatic Enclave Branch, Islamabad, wrote a complaint to the higher authorities F.I.A alleging embezzlement, fraudulently and dishonestly marked debit block/unblock bank account No.0010034650020017 A.B.L, Diplomatic Enclave Branch, Islamabad of a customer Ferhat Kevakli and an amount of USD 39200\$ was embezzled from the said account on 02.11.2018 through cheque No.11173487, with fake signatures of the customer. Hence, the above said F.I.R.

3. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the case by the complainant/manager, in order to show fake efficiency to his high-ups; that there is no such

embezzlement; that there was no monetary loss to the bank or to the account holder Ferhat Kevakli. The learned counsel further contended that the petitioner had infact been deceived by the management of A.B.L in order to conceal mistakes, done by some other staff as well as short comings, which occurred during the final audit of the bank record; that the petitioner/accused was deprived of right of defense during departmental inquiry by the A.B.L management and the F.I.A authorities, at the stance of Branch Manager A.B.L, falsely involved him in the instant case. The learned counsel further stated that during the course of investigation, two other officials namely Ms. Saba Tabbasum (BSM) and Shahzaib Tahir (Teller) were also involved in the matter but thereafter, both the above said officials have been joined as witnesses in the instant case against the petitioner. Lastly, contended that no offence is made out against the petitioner as there is no loss to the bank or to the above named customer, therefore, case of petitioner falls within the domain of further inquiry.

4. On the other hand, learned counsel for the complainant vehemently opposed the argument advanced by the learned counsel for petitioner with the contention that the petitioner was entrusted with the position of Branch Manager at the time of commission of offence. The petitioner fraudulently and dishonestly marked debit block/unblock bank account No. 0010034650020017 ABL Diplomatic Enclave Branch, Islamabad, of customer Ferhat Kevakli and an amount of USD 39200\$ was embezzled from the said account through cheque with fake signatures of the customer. The learned counsel further contended that the forensic audit report reveals that the petitioner forged the cheque of

Ferhat Kevakli with fake signatures. Further contended that the petitioner is directly nominated in the F.I.R. he has committed fraud and has been involved in the commission of offence for entrustment of property of a huge amount of USD 39200\$ of a customer. That the above said account number was the dormant one, which was fraudulently made active by the petitioner, he got issued cheque book and then embezzled the said amount.

5. Heard arguments of the learned counsel for the parties and gone through the available record.

6. Perusal of the record reveals that the petitioner has allegedly processed and authorized the fake cheque book requisitioned form of the customer and huge amount was embezzled with fake signatures of the customer. The evidence available with the prosecution is of documentary nature and has already been collected by the investigating officer. Therefore, there is no chance of tempering with the prosecution evidence. Reliance is placed on the judgment of august Supreme Court titled Saeeda Amir Vs. the State (1995 SCMR 170). The guilt of petitioner/accused is yet to be determined by the learned Trial Court after recording of the prosecution evidence. The alleged offences under Sections 420, 468 and 471 P.P.C are bailable in nature whereas offence under Section 409 P.P.C is punishable with the imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, where two types of sentences are provided for the offence, then lesser punishment, is to be considered by the Court for the purpose of bail.

7. Furthermore, the amount allegedly embezzled by the petitioner, has been deposited by him through cheque and cash under protest. The investigation has already been completed; the petitioner is no more required to the prosecution in any manner for any probe. Initially, one Saba Tabassum/BSM and Shahzaib Tahir/Teller were also nominated and Saba Tabassum was also given a specific role in the commission of offence and thereafter, they have been made a witness against the petitioner which makes the case of petitioner one of further inquiry in terms of Section 497 (2) Cr.P.C and no purpose would be served to the prosecution if the petitioner is not granted bail.

8. It has been aptly held by the Hon'ble Supreme Court of Pakistan in the case of "**Manzoor and 04 other vs. State**" (PLD 1972 SC 81):-

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

9. For what has been discussed above, we allow this petition and direct the petitioner to be released on bail, subject to furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

10. The observations made, hereinabove, are tentative in nature which shall have no bearing effects on the merits of the case.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

"Rana.M.Ift."