

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

Crl. Misc. No.758/B/2019.

Khalid Mehmood

Versus

The State etc.

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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20.12.2019.	Raja Ikram Ameen Minhas, Advocate for the petitioner. Raja Muhammad Aftab Ahmed, AAG. Mr. Faisal Bin Khurshid, Advocate for IESCO/respondent No.2. Sajid Inspector, P.S FIA/ACC, Islamabad alongwith record.	
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Through instant criminal miscellaneous petition, the petitioner has prayed for post arrest bail in case FIR No.10, dated 02.08.2019, U/S 420/464/468/471/473/419/409/109 PPC read with section 5(2) PCA, 1947, P.S FIA, ACC, Islamabad.

2. Brief facts as referred in the FIR are that consequent upon enquiry No.90/2019 of P.S. FIA (ACC), Islamabad, it transpired that Mr. Muhammad Naeem Ex-RO-I, IESCO Sub-Division-I, Islamabad, Khalid Mehmood, Commercial Assistant, CSO-1, IESCO Div-1, Islamabad, Muhammad Rafique, the then Accounts Assistant RO-1, IESCO Sub-Division-1, Islamabad and Gul Khatab (a private person) in connivance with each other prepared and posted bogus scrolls relating to IESCO Consumer Bills using fake statements along with bills stubs with fake bank stamps of an amount of Rs.43 Million (approximately) in the month of June 2019 only. They also got cleared and verified all these bogus scrolls and stubs and reconciled these with the bogus monthly bank statements and the same were then forwarded for further posting in the IESCO online system at Computer Section. As per interim report of IESCO Departmental Enquiry

Committee, said amount has been found as Rs.207,752,411/- for a period from July 2018 to June 2019. Hence, these persons have allegedly caused colossal loss to national exchequer by misuse of authority, criminal misconduct and breach of trust. The above narrated facts *prima facie* constitute offences under Sections 420, 464, 468, 471, 473, 409, 109 r/w 5(2) of PCA 1947. Therefore, after approval, a case has been registered against (1) Muhammad Naeem, RO IESCO Sub-Division Taxila (2) Khalid Mehmood, Commercial Assistant, CSO-1, IESCO Sub-Division-1, Islamabad (3) Muhammad Rafique, Accounts Officer, IESCO Sub-Division, Talagang, District Chakwal and (4) Gul Khatab (37405-3458017-1) r/o Jan Colony, TENCH BHATTA, Rawalpindi.

3. Learned counsel for the petitioner contends that the petitioner was daily wages employee in IESCO and was performing his duties as Commercial Assistant, CSO-1, IESCO, Sub-Division-1, Islamabad and has been nominated in this case without any basis; that no recovery has been effected from the petitioner, through which it could be assumed that incriminating material is available against him; that four other accused have been granted post arrest bail by this Court as well as by Trial Court as such rule of consistency is applicable to the extent of the petitioner; that amount of Rs.5,00,000/- claimed to be recovered from the petitioner was received by the I.O in Police Station from brother in law of the petitioner, which is reflected from memo of recovery as such the same is not legally entertainable to link the petitioner with the crime; that challan has not yet been submitted in the Court and the petitioner is behind the bars since 02.08.2019.

4. Conversely, learned counsel for IESCO/respondent No.2 as well as learned State Counsel contend that the petitioner is nominated in this case with specific role of causing huge loss to public exchequer on the basis of fake entries in scrolls; that without fake entries made by the petitioner in IESCO Scroll System, the fraud could not be committed and the petitioner has shared his liability with other co-accused persons, who were operating in gang; that role of the petitioner is different to that of co-accused, who have been granted post arrest bails; that the offence with which the petitioner has been charged falls within prohibitory clause of section 497, Cr.P.C.

5. I have heard learned counsel for the parties and gone through the record.

6. Tentative assessment of record reflects that the petitioner is nominated in case FIR No.10, dated 02.08.2019, U/S 420/464/468/471/473/419/409/109 PPC read with section 5(2) PCA, 1947, P.S FIA, ACC, Islamabad lodged on the complaint of Baber Mehmood, Deputy Manager (Operations), IESCO Division-I, Islamabad. The FIA Authorities consequent upon enquiry No.90/2019 nominated the petitioner, who was Commercial Assistant, CSO-1, IESCO, Division-1, Islamabad. Cursory glimpse of record reflects that the petitioner being Commercial Assistant was dealing with scrolls and remittances of Bank of Punjab for coding and onward forwarding to computer centre, whereby he received fake stubs and bogus scrolls from different individuals, co-accused persons and processed the same in the system, against which he received amount on each set of entries. The record further reflects that majority of the bogus scrolls stubs are relating to consumers of

Taxila, in which fake stamps of Bank of Punjab have been used. Additional Deputy Manager/RO-1, IESCO, Division-1, Islamabad after assuming the charge verified the scrolls, in which it was observed that certain doubtful scrolls dated 27.06.2019 came to his notice and after collection of scrolls from computer centre and available record in the office, he verified the same from Manager, Bank of Punjab, Blue Area Branch vide letter No.1793-94 dated 17.07.2019 and letter No.1801-03 dated 19.07.2019, whereby it revealed that scrolls amounting to Rs.30 million approximately were not verified, whereupon the petitioner, who was dealing official of IESCO and was performing duties of entries of scrolls could not explain the said position, where-after bank statements were collected and each remittance was also reconciled at Financial Directorate Office level.

7. The above referred background spells key role of the petitioner being Commercial Assistant in posting bills payments through bogus means by using bank of Punjab code 08001 as he was the only Commercial Assistant, who was assigned task of coding of Bank of Punjab bills.

8. I have also gone through the statements of different persons recorded U/S 161 Cr.P.C, who have been deprived from their hard earned money of their due payment of their charges to IESCO, which was received through different agents and they have been given clear bills without complete payment. The prima facie perusal of record reflects that entire fraud could not be conducted without key position of the petitioner in the entire scam. The offence with which the petitioner has been charged especially section 409 PPC read with section 5(2)47, PCA, 1947

falls within prohibitory clause of section 497, Cr.P.C. Section 5 of PCA, 1947 imposes heavy duty upon public servant, who accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification as a motive or reward in terms of section 161 PPC or accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any valuable thing without consideration or for a consideration, which he knows with reason to believe that it is related to his official business and function and on its receiving, he dishonestly or fraudulently abuses his official position for his pecuniary advantage, which amounts to corruption, is not entitled for any concession of bail.

9. Co-accused Abid Mehmood has been granted post arrest bail by this Court vide order dated 14.11.2019 in Crl. Misc. No.701-B/2019, who is private person and was not directly nominated in this case. Similarly, other co-accused Tariq Mahmood Shah has been granted post arrest bail by this Court vide order dated 18.10.2019 in Crl. Misc. No.621-B/2019, who is also a private person, however, third co-accused Asif Rehman was Account Assistant of IESCO, who has been granted post arrest bail by this Court vide order dated 18.10.2019 in Crl. Misc. No.621-B/2019 mainly on the ground that he was not nominated in this case and no incriminating article has been recovered from him to connect with alleged crime as the I.O failed to point out any evidence regarding preparation of any bogus scroll or bill, which was duty of the present petitioner, therefore, role of the petitioner is altogether different from other co-accused and in this regard he cannot get benefit of rule of consistency. It is trite law that grant of bail is discretion if case of further inquiry,

malafide of the prosecution innocence of accused is made out. No exceptional circumstances have been highlighted to extend benefit of bail to the petitioner, who is prima facie connected with hideous crime of fraud being public servant and the principles highlighted in PLD 1995 SC 34 (Tariq Bashir and 5 others vs. The State) and PLD 2017 SC 733 (Muhammad Tanveer vs. The State and another) are not attracted in this case.

10. For what has been discussed above, the petitioner is not entitled for post arrest bail, therefore, instant petition is dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam