

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 182-B of 2020.

Yasir Javeed.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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26.03.2020. Ch. Waseem Bahadur, Advocate for the petitioner.
Mr M. Atif Khokhar, State Counsel.
Mr Jair Nasrani, A.D/I.O. FIA with record.

The petitioner Yasir Javeed son of Javeed Anwar has sought post arrest bail in case, F.I.R. No. 03, dated 29.01.2020, registered under sections 409, 420, 468, 471, 109 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station FIA Commercial Banks Circle, Islamabad.

2. Brief facts as alleged in the FIR are that pursuant to a complaint filed by Syed Hasan Askari, the Federal Investigation Agency, initiated an enquiry. It is alleged that the petitioner as an employee / official of Technical Support Unit, Economic Affairs Division had dishonestly and fraudulently embezzled Rs.0.92 million and had caused loss to the department. Hence, the instant F.I.R.

3. The learned counsel for the petitioner has contended that; the latter is innocent; the petitioner has been falsely involved in the instant case; the petitioner is not the beneficiary and has not committed the alleged offences; story as narrated in the FIR is false, frivolous and

vexatious; the petitioner was not given an opportunity of being heard; the petitioner was not the custodian of cheque books, rather the Director General was the custodian of the cheque books; the Director General was not arrayed as an accused in the instant case; the petitioner has been involved in the instant case with connivance of the police; no incriminating material was recovered from the petitioner despite being on physical remand for ten days; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; the alleged occurrence had taken place in the year 2017, however, the instant FIR was registered on 29.01.2020 i.e. after a delay of three years; the instant case has been registered malafidely in connivance with the officials of the Federal Investigation Agency; the petitioner has no concern whatsoever with the alleged offences; element of entrustment could not be made out; the petitioner is not a beneficiary of the misappropriation; the Federal Investigation Agency lacks jurisdiction and without lawful authority the FIR was registered; the grant of bail to the petitioner is a matter of right; the Federal Investigation Agency was not vested with power to investigate the matter since the offences are not included in the Schedule of Federal Investigation Agency Act, 1975; offence under section 409 of PPC is not attracted against the petitioner; the petitioner has been incarcerated for about two months; offences do not fall within the ambit of prohibitory clause of section 497 Cr.P.C.; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner has no criminal record; there is no other case against the petitioner except the present case; offences in the light of assertion made in the FIR are not attracted against the petitioner; trial of the case has not commenced as yet because the charge against the petitioner has not been framed; hence urges for the grant of bail.

4. The learned State Counsel appeared alongwith Jair Nasrani, A.D./I.O.FIA. They have opposed the grant of bail. They have argued that; the petitioner is nominated in the FIR with specific role; the petitioner being account officer of the department, co-signatory and custodian of cheque books had dishonestly and fraudulently with forged signatures of co-signatory namely, Mr Hammad Shamimi embezzled an amount of Rs.0.92 million through nine cheques, had made transactions and caused loss to the department; the conduct of the accused brings his case within the exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 Cr.P.C.; it was admitted that there is no other criminal case registered against the petitioner; hence urged for dismissal of the instant petition.

5. The learned counsel for the petitioner and the learned State Counsel has been heard and record perused with their able assistance.

6. The offences, except section 409 of PPC included in the FIR are, admittedly, of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. 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;
- iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
- iv) Where the accused is a previous convict.

7. The Hon'ble Supreme Court of Pakistan reaffirmed and reiterated the principles as laid down in the earlier judgments of *"Subhan Khan Versus The State"* reported as [2002 SCMR 1797] and *"Tariq Bashir and five others versus The State"*, reported as [PLD 1995 S.C. 34]. The said principles have been consistently followed. Reliance may also be placed on the case of *"Riaz Jafar Natiq versus Muhammad Nadeem Dar and others"*, reported as [2011 SCMR 1708].

8. Perusal of record shows that the alleged offences relate to the year 2017, whereas the instant FIR was lodged on 29.01.2020 i.e. after a lapse of three years. The delay in lodging the FIR has not been explained. The co-signatory was not associated and has not been arrayed as an accused. No incriminating material was recovered from the petitioner despite being on physical remand for a considerable period. The instant case was registered on 29.01.2020 and the petitioner was arrested on the same day. The role of the petitioner and whether he was involved in the offences by forging signatures requires further probe. Whether or ~~not~~ the ingredients of section 409 of PPC are fulfilled also requires further

probe. The petitioner has been incarcerated for almost two months. Investigation qua the petitioner has been completed and, therefore, further incarceration of the petitioner will not serve any useful purpose. Moreover, there is nothing on record to show that the petitioner may abscond if he is released on bail or that he may tamper with the evidence or intimidate witnesses. The offences mentioned in the FIR, except section 409 of PPC, do not come within the ambit of prohibitory clause of section 497 Cr.P.C.

9. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

10. In the circumstances as mentioned above, this petition is **allowed** and the petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs.1,000,00/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(AAMER FAROOQ)
JUDGE

(CHIEF JUSTICE)

*Asad K/**