

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

encl Misc 744-B-2013.

" " 764-B-2013.

Case No. " " 04-B-2014.

Titled *Abdul Sattar Baig*  
Vs

*State*

(a) Judgment approved for reporting

Yes/No

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

Yes No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

*[Signature]*  
Initial of the Judge.

## NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

**ORDER SHEET.****IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.****CASE NO.: CRL. MISC. NO.744-B-2013****Abdul Sattar Baig****Versus****The State****CASE NO.: CRL. MISC. NO.764-B-2013****Nadir Bakhsh etc.****Versus****The State****CASE NO.: CRL. MISC. NO.04-B-2014****Mst.Saima****Versus****The State & Another**

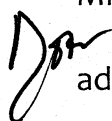
S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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29.01.2014 Mr. Sher Afzal Khan, Mr. Ajmal Khan  
Khattak & Mr. Wajid Hussain, Advocates  
for the petitioners in their respective  
petitions.  
Abdul Sattar Baig, SI/accused.  
Sheikh Muhammad Yaqoob, DAG along  
with Qaisar Masood, Deputy Director  
(Law), FIA.

**NOOR-UL-HAQ N. QURESHI J.-** All the above titled bail  
petitions are being disposed of by this consolidated  
order, as same arise out of one FIR bearing No.527/2013  
dated 25.11.2013 offence u/s  
395/411/420/468/471/409/170/171 PPC read with 20/65/13-  
AO & 9-A (CNSA) registered at P.S. Tarnol, Islamabad.

2. It is pertinent to mention here that through Crl.

Misc.No.744-B-2013, the petitioner seeks confirmation of



ad-interim pre-arrest bail already granted vide order

dated 16.12.2013 passed by this Court, whereas through rest two bail petitions bearing Crl. Misc. No.764-B-2013 & Crl. Misc. No.04-B-2014, the petitioners seek post arrest bail in connection with above FIR after failure to seek such relief from the lower forum.

3. Brief facts of the prosecution case are that on receiving spy information, team of CIA/Investigation conducted raid at Link Road, Motorway Chowk, Islamabad falling within the territory of P.S. Tarnol, Islamabad, where Aun Abbas/HC, Ishtiaq Ahmed/C, Nadir Buksh of same Police Station & Nadir Baksh, Ishtiaq Ahmad, Sheeran Hayat, Muhammad Ayub & Mst. Saima were present at the spot. On conducting search, two pistols 30-bore, Rs.57,000/-, Charas Garda weighing 50-grams, 100 US\$, Rs.4,000/- & a Vehicle bearing Registration No.RIP-1027 with bogus number plate were recovered from their possession. Another vehicle having Registration No.KW-981, which was used by Aun Abbas was also recovered along with other vehicles, several official documents, police uniforms and motorcycles. All these articles and currency were taken into possession through recovery memos.

4. It has been argued by Mr. Sher Afzal Khan, Advocate-learned counsel for the petitioner in Crl. Misc. No.744-B-2013 that the petitioner was not available at the

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time of alleged raid, as such, no offence is made out against him; he has been roped in this case falsely on the basis of statement of co-accused made before the police, which is an inadmissible evidence in view of Article 38 & 39 of Qanoon-e-Shahadat Order; the entire case is based upon imagination of ASP Hassan posted at CIA Investigation Wing, who has neither cited any complainant nor any private witness of the alleged incident; no permission in this regard was obtained from competent authority; neither the CIA officials have any role to register the case nor they themselves could conduct investigation; the petitioner, being a police officer, have 33-years unblemished record, hence there is no likelihood of his disappearance, if pre-arrest ad-interim bail granted to the petitioner vide order dated 16.12.2013 is confirmed; the petitioner has no criminal history; he is a civil servant and public servant as defined u/s 21 PPC; the petitioner is ready to furnish bail bond or any guarantee required by this Court for his continuous appearance. It is also emphasized on his behalf that the duty roster of Police Station Tarnol, Islamabad shows special Naka therefore it cannot be treated as illegal deployment of police by the petitioner. Moreover, he referred two FIRs bearing Nos.325/2013 dated 25.11.2013 & 526/2013 of even date registered at the same Police Station and argued that on the very same day of registration of instant FIR,

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alleged recovery of some narcotics and weapons was made from the said place of incident. In support of his arguments, he has also referred the application moved against ASP Hassan before the learned Judicial Magistrate by Aun Abbas as well as copy of rupt No.37 dated 29.11.2013 lodged recorded by Muhammad Arif, ASI of same Police Station i.e. Tarnol, Islamabad therefore the proceedings initiated against the petitioner are based upon malafide, hence he deserves for confirmation of bail. In support of his contentions, he relied upon following judgements: -

- i) **Muhammad Azhar Siddiqui and others Vs. Federation of Pakistan and others (PLD 2012 Supreme Court 774)**
- ii) **Habib Ullah Vs. Capital City Police Officer, Lahore and 03-Others (2011 P.Cr.LJ 1826)**
- iii) **Mst. Raheema Vs. The State (2003 YLR 1930)**
- iv) **Haji Muhammad Abbas and Others Vs. The State (1996 SCMR 530)**

5. Mr. Ajmal Khan Khattak, Advocate-learned counsel for the petitioners in Crl. Misc. No.764-B-2013 has mainly concentrated upon misapplication of relevant provisions of law. He has contended that hardly, Sections 170 & 171 PPC would apply in their case, which are bailable in nature, not falling within the Prohibitory Clause of Section 497 Cr.P.C.; no witness appeared before the police who has been looted by the petitioners and no one

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has deposed against any of these petitioners.

6. Mr. Wajid Hussain, Advocate-learned counsel for the petitioner in Crl. Misc. No.04/2014 has adopted the arguments advanced by both the learned counsel named above.

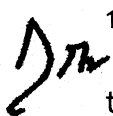
7. On the other hand, learned DAG has argued that the petitioner in Crl. Misc. No.744-B-2013 namely Abdul Sattar Baig being SHO/Incharge was responsible to supervise the affairs and duties of police officers within his territorial jurisdiction. He is, therefore, wholly responsible for all the illegal acts done by them. The petitioner, being SHO, is burdened with heavy responsibility of providing protection to the citizens. He, instead of performing his lawful duties, deployed the police officials along with private persons in police dress on special Naka, which was neither notified nor permitted by any of the competent authority under the police rules. The petitioner has misused his official powers vested in him by virtue of law. The petitioner has been charged with criminal misconduct as defined in Section 5(2) Act No.II of 1947 of the Prevention of Corruption Act, 1947. The petitioner remained busy in illegal activities having full knowledge and awareness of his official duties. Severe allegation of criminal breach of trust is prima facie established from the raid conducted, punishment  
Dra whereof provided by law is imprisonment for life,

minimum punishment provided is up to ten years and also liable to fine.

Regarding other petitioners, learned DAG argued that they were accomplice to the principal accused and were acting contrary to law and have committed scheduled offences as specified in FIR. Moreover, narcotics and illicit weapons were also recovered from their possession therefore the other petitioners also do not deserve for grant of bail.

8. We have carefully considered the arguments advanced by learned counsel appearing for their respective parties as well as learned DAG and record, authorities referred and relevant provisions of law have also been perused.

9. It is a settled principle of law that a scheduled offence specified in Criminal Law Amendment Act, 1958 could exclusively be triable by the Special Judge appointed under the Act. The normal offences could be charged and tried together with the scheduled offences exclusively triable by the Special Judge, whereas the ordinary court cannot try the scheduled offences coupled with normal offences, which are not included in the Schedule.

 10. The attempt, abetment and conspiracy attached to the Prevention of Corruption Act, 1947 or the scheduled

offences are also triable by the Special Court coupled with ordinary offences. Other offences have also been applied not included in the schedule. Section 11 of the Criminal Law Amendment Act depicts that offences triable by Special Judge under the Act shall be deemed to be non-bailable and subsection (2) of Section 11 further depicts that if simple imprisonment is provided by any law, same shall be deemed to be punishable with imprisonment of either description. Therefore, we disagree with the analogy as rendered by the learned counsel for the petitioner with regard to the offence being bailable.

11. We further observe that any other person who acted jointly with the public servant, if committed a scheduled offence with abetting or attempting to abet or acting in conspiracy with public servant, he shall also be tried by the Special Judge as defined in the Schedule of Criminal Law Amendment Act, 1958. Therefore, again the argument advanced by Mr. Ajmal Khan Khattak, Advocate that his client is not a public servant as defined under Section 21 PPC, is not correct.

12. Regarding two FIRs registered on the same day of incident pointed out by the learned Counsel for the petitioner Mr. Sher Afzal Khan, Advocate, by referring duty roster, it appears that Chungi No.26 is quite different



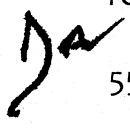


place to that of special Naka. The petitioner again has not been able to submit any documentary evidence with regard to approval of special Naka, therefore, same appears to be a place chosen by the petitioners for their malfeasance disclosed during raid conducted by CIA officials.

13. As far as allegation against ASP Hassan leveled by one of the co-accused Aun Abbas, is concerned, from perusal of application referred, it appears to be an afterthought for which no proof was submitted.

14. We further observe that copy of rupt No.37 dated 29.11.2013, which shows departure of Abdul Sattar Baig, SI recorded by Muhammad Arif, ASI has no validity, as the same was not incorporated in the daily diary register. From perusal of the same, though rupt number is available, but its reference in the daily diary maintained in the Police Station is not available.

15. The argument with regard to illegal raid conducted by CIA officials has again not been substantiated with documentary evidence. On the contrary, letter issued by SSP, Islamabad available on record empowers CIA officials to conduct such raids and further to investigate the matter. The law, by itself, is very much clear with regard to the powers vested to SSP by virtue of Section

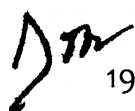
 551 Cr.P.C., which defines powers of superior officers of

police who are superior in rank to an officer in-charge of a Police Station, may exercise the same powers. Therefore, in our view, delegation of powers in such capacity is in accordance with law.

16. Moreover, from the order passed by the Special Judge Central, Islamabad, it appears that petitioner Abdul Sattar Baig again slipped away from the court premises. Today again, when this order is being dictated, he slipped away from Court's premises. Therefore, we are of the opinion that Abdul Sattar Baig, the petitioner, has no regard for the Court. Otherwise, for this alone score, the petitioner is not entitled for grant of bail in view of pronouncement reported in 1989 P.Cr. LJ 917.

17. The representative of FIA namely Qaisar Masud, Deputy Director (Law), FIA available in the Court, has confirmed this fact that the said petitioner after obtaining ad-interim bail from this Court, has not joined investigation entrusted to him.

18. Under the circumstances narrated above, we find no force in all the above bail petitions, as prima facie, reasonable grounds exist to believe that petitioners are involved in commission of above offences, therefore, they do not deserve for grant of bail.



19. All the bail petitions titled above are dismissed.

20. The observations above are tentative in nature, only confining to the present bail petitions therefore, the same will not affect the case of either party during the trial.



(RIAZ AHMAD KHAN)  
JUDGE



(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Zawar

*Approved for reporting.*

*Blue slip added.*  
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