

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

Criminal Misc. No. 154-B/ 2020
Noor Muhammad
Vs
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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05.03.2020	Mr. Armaghan Saqib Khan, Advocate for petitioner. Mr. Sadaqat Ali Jahangir, learned State Counsel with Muhammad Ishaque SI Police Station Industrial Area, Islamabad. Malik Amir Dad Awan, Advocate for respondent No.2/ complainant.
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This is post-arrest bail petition by accused-petitioner {Noor Muhammad} in case FIR No.71 dated 31.01.2020, under Sections 420, 468, 471 PPC Police Station Industrial Area, Islamabad.

2. The record appended with the petition reveals that earlier bail petitions of the petitioner were rejected by the learned Judicial Magistrate and learned Additional Sessions Judge-X Islamabad-West vide orders dated 08.02.2020 & 17.02.2020 respectively.

3. Learned counsel for the petitioner contends that the complainant admits his agreement to sell with the main accused; that no pecuniary loss had been caused to the complainant; possession of the house is still with the complainant; that maximum it could be said that said agreement is legally incompetent but cannot be described as forged one; that instead petitioner defrauded someone, he himself was defrauded; he stresses that his agreement is correct and genuine one. Lastly submits that petitioner is behind the bars since

31.01.2020; that he himself went to the police station for filing of application against the fraud committed with him but he was arrested; that maximum, it is a civil nature dispute which has been converted into criminal by the complainant in connivance with the police and that case against the petitioner is one of further inquiry, therefore, is entitled to the concession of bail.

4. Learned State Counsel assisted by learned counsel for the complainant states that petitioner is the main accused of the said occurrence, is main/head of a gang of land grabbers, sufficient incriminating material is available on record, therefore, instant application is liable to be rejected.

5. Arguments heard, record perused.

6. As per contents of FIR, the complainant alleged preparation of four forged agreements to sell of his house, situated in Sector I-8/2, Islamabad by accused Zulfiqar Ahmad Abbasi, Noor Muhammad Shah (Present petitioner) Muhammad Imran and Arshad Khan. The complainant alleged that Zulfiqar Ahmad Abbasi is the mastermind of the fraud and prayed for penal action against the culprits.

7. When confronted the learned counsel appearing on behalf of complainant, that whether any suit for cancellation of said alleged forged agreements have been filed, he answered in affirmative by stating that suit for cancellation of these fake documents/ agreements had been filed by the complainant.

8. The offences under sections 468 & 471 PPC mentioned in the FIR are non-cognizable wherein police is duty bound to cause arrest of the culprit after procuring warrants but in the

present case, as admitted by the I.O, no such warrants or permission had been obtained from the Ilaqa Magistrate to register or investigate the case under said sections which is against the spirit of statute and unwarranted. In this respect I am guided by the case laws reported as *Raja Pervaiz Akhtar Vs The State {2000 YLR 539}* and *Asif Nawaz Khokhar Vs The State {2016 PCr.LJ 40}*.

9. As per contents of FIR, the signatures of the complainant on the agreement executed with the main accused are found to be forged but as far as agreement of the present petitioner with said Zulfiqar Abbasi is concerned, there is no material on record or allegation by the complainant that the same were also forged.

10. The possession of house in question is still with the complainant and matter is to be adjudicated upon by the civil court. It is also important to note that if he was a grabber, as alleged, then he would not himself appear in the police station when he was called by the I.O. for some information regarding matter in issue. He himself appeared in the police station alongwith application that a fraud had been committed against him and the said application is part of record so his arrest was not a result of any raid by the police rather he appeared at his own.

11. As far as offences under sections 420 & 471 PPC mentioned in the FIR are concerned, same are bailable while offence under section 468 PPC is although not bailable but does not fall within the ambit of prohibitory clause of section 497 Cr.PC. No active role had been ascribed to the petitioner. In order to verify the

signatures, said agreements have been sent to the handwriting expert for comparison and verification. A civil suit regarding said agreements is pending adjudication before the civil court of competent jurisdiction. When complainant had approached the civil court for adjudication of his civil rights by filing suit for cancellation of documents, then same subject matter is before the civil court, then case under section 468 PPC becomes of further inquiry qua role of the petitioner. In this respect I am guided by the case law reported as ***Muhammad Azeem. Vs. The State and another {2011 SCMR 1533}*** wherein it is held that:-

"5. Having heard learned counsel for the parties and learned Law Officer at some length, we find that admittedly the complainant filed a civil suit two months prior to the registration of the instant case qua the same subject matter. There is no allegation of forgery and nothing has to be recovered from the petitioner. Sections 420 and 471, P.P.C. are bailable whereas sections 467 and 468 pertains to forgery, which issue would require further inquiry so far as petitioner's guilt is concerned. In the afore-referred circumstances, petitioner has made out a case for bail."

12. Although incomplete challan has been submitted but charge has not yet been framed and the report of handwriting expert is still awaited. When investigation has been completed and case is still not in progress, no useful purpose would be served to keep the petitioner behind the bars for indefinite period.

13. In view of above, instant bail petition is allowed. The petitioner {Noor Muhammad} is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- with one

surety in the like amount to the satisfaction of the learned Trial Court.

14. Needless to mention that above is only tentative assessment for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

Suhail