

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Criminal Misc. No. 810/B/2020.

Haji Khair Ullah

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.
	07.07.2020.	Mr. Kamran Murtaza, Advocate for petitioner through video link. Syed M. Tayyab Shah, DAG. Sabir Hussain Shah, Assistant Director, FIA. M. Noman, Inspector, FIA.

Through this CrI. Misc., petitioner has prayed for post-arrest bail in case FIR No.07, dated 06.08.2019, U/S 11-N ATA, 1997 read with section 4/5/23 of FERA, 1947, P.S. CTW/FIA, Islamabad.

2. Brief facts referred in the instant FIR lodged by FIA under Enquiry No.07/2017 are that during the course of inquiry it transpired that Hayatullah, Hikmatullah and Abdul Nafey are conducting high value transactions in their respective bank accounts and associated with terrorist financing in connivance with office of Foreign Assets Control and United Nations Security Council (UNSC) listed individual namely Haji Khairullah Barakzai Khudai Nazar, who is also owner of Haji Khairullah Haji Sattar Money Exchange which is also listed in UNSC Resolution No.1267 as accused person involved in the terrorist financing using channel of Hawala/smuggling etc. and transacting the amount

to those three accused persons.

3. Learned counsel for the petitioner has argued the case through video link facility from Quetta and contends that there is not an *iota* of evidence available against the petitioner to be involved in terrorist financing, nor any material has ever been confronted to the petitioner in this regard; that I.O as well as FIA have not collected any incriminating material to connect the petitioner with terrorist financing rather the entire action is based upon malafide of the Government of Pakistan whose name is likely to be placed to avoid the grey list of FATF and FIR has been lodged after delay of 09 years of passing of the resolution by the UNSC; that CNIC of the petitioner has been blocked since 09 years and he is unable to perform his daily basis function and he has filed an application to the NADRA for unblocking of his CNIC, which is pending before the competent authorities; that petitioner is sick and infirm person of advance age, who is ready to furnish all kind of security.

4. Conversely, learned DAG alongwith Assistant Director, FIA and I.O of the case contend that petitioner has been nominated as accused on the basis of UNSC Resolution No.1267, whereby name of petitioner is reflected as terrorist financier; that petitioner despite blocking of his CNIC has transferred his properties situated in Lahore to one Hayatullah on 24.07.2018 and even on his pointation a mobile SIM was recovered in

the name of Abdul Nafey, who has been granted post-arrest bail by the Anti Terrorism Court, Islamabad, which linked the petitioner with Afghanistan and petitioner is Afghan citizen and if petitioner is granted post-arrest bail, he may abscond to Afghanistan and avoid due process of law.

5. Arguments heard, record perused.

6. The tentative assessment of record reveals that petitioner has been nominated in the above mentioned FIR on the basis of UNSC Resolution No.1267 with reference to allegation of terrorist financing. The FIR has been lodged on 06.08.2019 after the elapse of 09 years from passing of the said resolution. However, when DAG as well as FIA officials have been confronted to justify the delay, they could not refer any plausible reason for registration of instant case with such a long delay, even I.O has been confronted to point out any of the terrorist organization or terrorist in whose account amount has allegedly been transferred by the petitioner through his bank account or through Hawala, whereby I.O states that petitioner has transferred 977407/- US\$ in the relevant period to different organizations and individuals but he is clueless about any such information, nor he is able to place a single document to justify that amount so transacted landed in the terrorist organization account. As such the I.O as well as FIA are unable to investigate such kind of crime which are based upon direction of UNSC.

7. The I.O has also been confronted as to whether he has obtained any information from UNSC or from any relevant officer qua any record through which it could be justified that name of the petitioner has rightly been placed in the UNSC Resolution No.1267 but no such effort has been demonstrated on record. The petitioner is admittedly of advance age with certain medical ailment but at this stage record is silent qua any incriminating material which could be made basis of his *prima-facie* involvement of the petitioner in terrorist financing. The requirement of Section 11-N of ATA, 1997 has to be seen in the light of Section 11-H of ATA, 1997, whereby any person who is involved in fund raising for the purpose of terrorism, terrorist organization or provides money for property to such organization or individual or he is involved in active money laundering. However, no such aspect has been highlighted by the FIA except their apprehensions, suspicions and notification of name of the petitioner in the UNSC resolution. The allegation of transmitting the amount in different accounts is yet to be proved in the trial Court which itself is ground of further inquiry in terms of Section 497(2) Cr.P.C. However, at this stage, the said authorities have failed to justify their actions in terms of Article 41 of the Charter of the United Nations (Security Council) Act, 1948, which requires at least minimum evidence for initiation of action by the state authorities, therefore, petitioner is entitled for

concession of post-arrest bail, therefore, instant petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing of bail bonds in the sum of Rs.10,00,000/- (Rupees One Million only) with one surety in the like amount to the satisfaction of learned trial Court.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid