

Form No: HCJD/C-121.
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 573-BC/2019

Muhammad Taha Imran Uppal
Vs
Dr. Amir Rasheed, 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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07-02-2020.

Mr Basharat Ullah Khan Advocate, for petitioner.
Raja Rizwan Abbasi and Ch. Gulfam Ashraf Goraya Advocates, for respondent no.1.
Mr Rabi bin Tariq, State Counsel.
Mr Abdul Ghafoor, Inspector/CIA.
Mr Rafi Ullah, S.I/I.O. with record.

This petition is directed against order, dated 11.09.2019, whereby extraordinary relief by way of confirmation of pre-arrest bail was granted by the learned Additional Sessions Judge, Islamabad.

2. The facts, in brief, are that FIR No. 237 dated 15.01.2019, was registered under sections 420, 468 and 471 of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") at Police Station Kohsar, Islamabad. It was alleged that respondent no.1, namely Dr. Amir Rasheed had forged signatures of the petitioner on nine cheques and consequently an amount of Rs.2,508,437/- was fraudulently withdrawn from the joint account. Respondent no.1 sought pre-arrest bail which was confirmed vide order, dated 09.07.2019, inter alia, on the

ground that signatures on the cheques were yet to be verified. The cheques were sent to the hand writing expert. The latter submitted report wherein according to his opinion, signatures on eight out of nine cheques appeared to be forged. After receiving the handwriting expert's opinion, the Investigating Officer added the offence under section 467 of PPC. Respondent no.1, therefore, filed a fresh petition seeking pre-arrest bail as protection against the newly added offence. Pre-arrest bail was confirmed vide order, dated 11.09.2019.

3. The learned counsel for the petitioner has argued that; the extraordinary concession of confirmation of bail vide the impugned order is in violation of the principles and law enunciated by the august Supreme Court; reliance has been placed on the case titled "*Rana Muhammad Arshad versus Muhammad Rafique and another*" [PLD 2009 S.C. 427]; the learned Additional Sessions Judge did not take into consideration the fact that respondent no.1 has a criminal record and he has remained involved as an accused in nine other criminal cases; the learned Additional Sessions Judge failed to appreciate that the complaint was regarding alleged forgery committed by respondent no.1; in the earlier order verification of the signatures by an expert was treated as a ground for further inquiry; after receiving the opinion which confirmed that out of nine cheques eight contained

forged signatures pre-arrest bail could not have been confirmed; the Additional Sessions Judge could not point out any malafide on part of the Investigating Officer and, therefore, confirmation of bail was in violation of the law laid down by the august Supreme Court.

4. The learned counsel for respondent no.1, on the other hand, has contended that; the principles for cancellation of bail are distinct and since there has been no misuse, thereof, bail already confirmed is not required to be recalled; respondent no.1 was entitled to confirmation of pre-arrest bail and the impugned order does not suffer from any legal infirmity; reliance has been placed on the cases "*The State / Anti Narcotics through Director General versus Rafiq Ahmad Channa*" [2010 SCMR 580], "*The State through Force Commander, Anti-Narcotics Force, Rawalpindi versus Khalid Sharif*" [2006 SCMR 1265] and "*Ehsan Akbar versus The State and others*" [2007 SCMR 482; in some of the cases registered against respondent no.1 in the past, he has been acquitted.

5. The learned Counsel for the parties have been heard and the record perused with their able assistance.

6. It is settled law that the principles for the cancelation of bail are distinct and all together separate from seeking bail. It is also settled law that bail once granted will be cancelled if the order granting bail on the

face of it is perverse, patently illegal, erroneous, factually incorrect resulting in miscarriage of justice, passed in violation of the principles for grant of bail or the concession of bail has been misused. Reliance is placed on the cases "*The State / Anti Narcotics through Director General versus Rafiq Ahmad Channa*" [2010 SCMR 580], "*The State through Force Commander, Anti-Narcotics Force, Rawalpindi versus Khalid Sharif*" [2006 SCMR 1265] and "*Ehsan Akbar versus The State and others*" [2007 SCMR 482].

7. The august Supreme Court in the case titled: "*Rana Muhammad Arshad versus Muhammad Rafique and another*" [PLD 2009 S.C. 427] after examining the precedent law has highlighted the principles and law regarding grant of pre arrest bail and the same are reproduced as follows:

"(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the

existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive from law; and finally that,

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance, approach the court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose."

8. In the facts and circumstances of the instant case, the confirmation of pre-arrest bail was erroneous and in violation of the settled principles of grant of extraordinary relief of pre arrest bail. The Additional Sessions Judge had earlier confirmed the pre-arrest bail relating to offences

under sections 420, 468 and 471 of PPC vide order, dated 09.07.2019. Perusal of the said order shows that the learned Additional Sessions Judge had confirmed the bail on the ground that verification of signatures on the cheques was awaited and, therefore, on merits a case of further inquiry was made out. Moreover, no plausible explanation or reasoning was recorded in relation to forming an opinion regarding the factor of malafide on part of the Investigating Officer or the petitioner nor this crucial factor was otherwise supported on record. The complaint was to the extent of alleged forgery of signatures on nine cheques. After receiving the opinion of the handwriting expert, the Investigating Officer added section 467 of PPC. Respondent no.1, therefore, filed a petition seeking pre-arrest bail to the extent of the said non cognizable offence and the same was confirmed by the learned Additional Sessions Judges, vide order, dated 09.11.2019. A plain reading of the impugned order unambiguously shows that the principles and law relating to confirmation of pre-arrest bail were not taken into consideration. Moreover, the learned Additional Sessions Judge appears to have treated the matter as a contractual dispute instead of complaint regarding forgery and as if it was a petition for post arrest bail. The reasoning recorded for grant of bail on merits, particularly relating to the opinion of the handwriting expert is erroneous, perverse and not in consonance with the settled principles. The handwriting expert's opinion,

prima facie, indicated that the complaint to the extent of forgery of signatures on eight cheques may not be without force. The learned Additional Sessions Judge also excluded from consideration the past record of criminal cases registered against respondent no.1. The impugned order does not disclose any extraordinary situation warranting relief of pre-arrest bail. Likewise, there is nothing on record to establish the existence of reasonable grounds leading to a belief that respondent no.1 was, prima facie, not guilty of the alleged offence or that there were grounds warranting further inquiry. The learned Additional Sessions Judge acknowledged the opinion of the handwriting expert but did not give any reason why he had excluded from consideration eight out of nine cheques which, prima facie, does not establish the existence of reasonable ground leading to the belief that respondent no.1 may not be guilty. The impugned order, dated 11.09.2019, has been found to be passed in an arbitrary manner and in disregard to the principles and law enunciated by the august Supreme Court regarding grant of extraordinary relief of bail before arrest.

9. For the above reasons, this petition is allowed and consequently order, dated, 11.09.2019, is hereby set aside and thus confirmation of pre arrest bail stands recalled. The Investigating Officer is, therefore, expected to proceed in the matter strictly in accordance with law. It

is noted that observations made in this order are tentative in nature and confined to the principles and law regarding grant of extraordinary relief of anticipatory bail. These observations shall not in any manner prejudice the proceedings including consideration of post arrest bail, if such a petition is filed because the law relating thereto is distinct.

(CHIEF JUSTICE)

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