

JUDGMENT SHEET  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.653-B/2020**

**Hassan Akhtar**  
Versus  
**THE STATE, ETC.**

*Petitioner by:* Mr. Ikram Haider, Advocate.

*Complainant by:* Ch. Riasat Ali Gondal, Advocate.

*State by:* Mr. Farrukh Shahzad Dall, AAG.  
Mr. Zia Ul Hassan, A.D, FIA.  
Mr. M. Haseeb, S.I, FIA.

*Date of Hearing:* 13.05.2020.

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**LUBNA SALEEM PERVEZ; J:** Through instant petition, the petitioner seeks bail after arrest in case FIR No.02/2020, dated 21.02.2020, for offences under section 420/468/471/409/109/201 PPC read with Section 5(ii)47 PCA, registered at Police Station FIA (Corporate Crime Circle), Islamabad.

2. The facts of the case as per record are that CDA conducted internal inquiry of the missing files of plot Nos. 827, 833, 789, 773 & 536 of Sector I-12/4, Islamabad, and it transpired that the files of these plots were duly received for transfer at One Window Directorate through Diary and Dispatch Register of Land and Rehabilitation Directorate (Estate Affectees Section) but no such movement was recorded in Admitting Section as the receipt of admitted cases were found available on computer system and admitting register, meaning thereby that the files were processed at Admitting Section. That when no clue of the missing files of the above plots was found, the matter was referred to FIA through a complaint filed by Fiaz Ahmed Watto, Director Human Resource Development-I, CDA Islamabad, and the case was registered vide above FIR against the accused/petitioner as well as three other officials of CDA. The case against the accused/petitioner is that he prepared fake and bogus files in connivance with the CDA Officials, who while misusing their official position unlawfully issued NOCs and processed the transfer of the above referred plots to other persons. As per record the accused petitioner is also one of the beneficiaries of the plot bearing No. 827 as found in the record of Computer Directorate, Personal Identification System (One Window Directorate). As per prosecution, the petitioner has intentionally and

deliberately misplaced the official record of the above referred plot files when it came to their knowledge that the scam of alleged illegal and unlawful transfer of the above plots has come into the notice of the authorities.

3. The Petitioner/accused applied for bail after arrest before Special Judge Central CCC/FIA, Islamabad which was dismissed, vide order dated 16.04.2020.

4. Learned counsel for the accused / petitioner submitted that the petitioner has been involved in the case by the complainant with mala fide intentions and to black mail and humiliate the petitioner; that nothing has been recovered from the petitioner during investigation which could connect him with the alleged offence; that the sections incorporated in the FIR against the petitioner in relation to the alleged offence are not attracted to the extent of petitioner's case as he is not a public servant; that if for the sake of arguments the contents of FIR are presumed to be correct then only section 201 PPC could be attracted which is bailable in nature; that the offences under sections 420/471 PPC are also bailable in nature, whereas, offence under section 468 PPC does not fall within the prohibitory clause of section 497 Cr.P.C in the light of the judgments of Hon'ble Superior Courts; that all the documents/record is in the custody of the investigating agency, therefore, there is no chance of tempering with the record by the petitioner; that the petitioner is not previously convicted; that no loss has been caused to the exchequer by the accused/petitioner, therefore, he cannot be detained behind the bars for unlimited period as he has been incarcerated since, 21.02.2020. Learned counsel to strengthen his arguments placed reliance on cases titled as "Slaman Irtiza vs. Ahmed Mian and another" (2010 P. Cr. L J 672), "Hakim Hussain vs. The State" (2019 YLR 1362) & "Riaz Jafar Natiq vs. Muhammad Nadeem Dar" (2011 SCMR 1708). Learned counsel on the above grounds requested for grant of bail to the petitioner.

5. Learned counsel for CDA submitted that the accused/petitioner has been nominated in the case for intentionally misplacing the official record to save himself and other co-accused from prosecution; that the petitioner being a property dealer has played a vital role in preparing bogus files and transferring the plots in connivance with the other co-accused; that during investigation it transpired that the files of the subject plots were handed over to the accused petitioner by the CDA staff and since then, there is no clue of the missing files; that the petitioner is not cooperating in the investigation; that the petitioner is also one of the transferee of the Plot No. 827 in Sector I-12/4 duly recorded in the Personal Identification System of OWO Directorate which is sufficient

incriminating evidence against the petitioner regarding commission of offence. Learned counsel lastly contended that bail cannot be claimed as a right by the accused and in the facts and circumstances that points towards Petitioner for receiving and misplacing the files, the petitioner is not liable to the concession of bail.

6. Learned AAG along with I.O of the case produced record of investigation and, *inter-alia*, submitted that accused petitioner is directly involved in the commission of offence and sufficient material in this regard is available on record, therefore, instant bail petition is liable to be dismissed.

7. I have heard the arguments of learned Counsel for the parties as well as learned AAG and have also perused the record produced by the I.O.

8. I have gone through the record of the investigation proceedings submitted by the I.O which reveals that the statement of staff/CDA officials recorded by the agency in connection with the case and missing plot files *prima facie* refers that the missing files of the above referred plots were handed over to the accused petitioner and since then same are not traceable. Record also reveals that in his statement u/s 161 Cr.P.C. the accused petitioner has admitted the receiving of the files and further stated that the plots were transferred legally through proper process, however, stated that when the issue came to the light, he cancelled the transfer of the plots out of fear and left the files in the taxi as he was mentally disturbed. However, it is settled through various pronouncements of superior Courts with reference to the provisions of Article 38, 39 & 40 of Qanoon-e-Shahadat 1984, that information received from the accused in custody is not admissible. Therefore, authenticity of any of the statements made by the accused petitioner as well as other persons associated in the investigation is yet to be proved through proper appreciation of evidence and record during the trial. Learned counsel also relied on the order of Hon'ble Supreme Court of Pakistan dated 07.04.2020 in Criminal Petition No. 299 of 2020, whereby, the Hon'ble Supreme Court of Pakistan *under the present circumstances due to pandemic of Covid-19, relating to grant of bail to the accused persons charged for offences under non prohibitory clause or under vagrancy law or offences carrying less than three (03) years sentence has observed that their cases be considered for grant of bail.* Further, at the bail stage tentative assessment of the case is to be made and the deeper appreciation of the evidence is neither required nor permissible in view of the plethora of the judgments of the superior Courts. Reference in this regard can usefully be made to the case law reported as ***Khalid Javed Gillani v. The State (PLD 1978 SC 256)***, ***Aamir Bashir and another Vs. The State and***

**others (2017 SCMR 2060).** The guidance has also been taken from the judgment of Hon'ble Supreme Court of Pakistan passed in case titled **"Manzoor and four others vs. The State" (PLD 1972 SC 81)** wherein their lordship have been pleased to observe that *"it is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation unless reasonable grounds appear to exist to disclose their complicity"*. The accused petitioner has been arrested on 21.02.2020 and has been incarcerated since then despite the fact that investigation to his extent has been completed, thus, as per record he is no more required for further investigation, hence, no useful purpose would be served by his incarceration. Record further shows that petitioner is not previously convicted, therefore, in my view he is entitled for bail after arrest.

9. For what has been discussed above, petitioner is admitted to post arrest bail, subject to furnishing bail bonds in the sum of Rs. 5,00,000/- (Rupees Five Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

*Adnan/\**