

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.713-B/2020

MUHAMMAD NADEEM

Versus

THE STATE AND ANOTHER.

Petitioner by: Ch. Bilal Yousaf Gujjar, Advocate.

Complainant by: Barrister Rizwan Ahmad, Special Prosecutor, NAB.
Mr. Ejaz Bashir Ahmad, Deputy Director, NAB.

State by: Mr. Zohaib Gondal, State Counsel.
Mr. Darya Khan, S.I.

Date of Hearing: 20.05.2020.

LUBNA SALEEM PERVEZ; J: Through instant bail petition, the petitioner seeks post arrest bail in case FIR No. 80/2020, dated 19.02.2020, for offences under section 419/170 PPC, 25-D Telegraph Act, registered at Police Station Aabpara, Islamabad.

2. Brief facts of the case are that the complainant Ijaz Bashir Ahmed, Deputy Director, Intelligence, NAB Head Quarter, Islamabad, through a complaint dated 19.02.2020, stating that certain complaints have been received to the Bureau that the accused Muhammad Nadeem s/o Mukhtar Ahmed is impersonating himself as Irfan Nadeem Mangi, D.G. NAB, and through cell phone Nos. 0300-5524725 and 0311-9407777, contacting different persons and asked for undue favours/monitory gains. On his complaint, the above FIR was registered and the accused was arrested on 19.02.2020.

3. Earlier his bail petition was dismissed by the Judicial Magistrate, Section 30-West, Islamabad, vide order dated 19.03.2020. Thereafter, his application for post arrest bail was also dismissed by the (Duty) Additional Sessions Judge-West, Islamabad, vide order dated 30.04.2020.

4. Learned counsel for the petitioner argued that the petitioner is innocent and has been falsely involved in the present case; that there is a delay in registering the FIR as no date and time of commission of offence has been recorded in the FIR; that the complainant has used his office against the petitioner; that the alleged offences does not fall under the prohibitory clause of section 497 Cr.PC; that incarceration of the petitioner is in the nature of pre-trial punishment;

that no forensic of the voice has been conducted by the prosecution, hence the prosecution story is based on doubts; that the challan has been submitted and the petitioner is no more required for further investigation, therefore, placing reliance on the cases titled as *Ikram-ul-Haq vs. The State* [2006 YLR 2977 (Lahore)], *Arshad Javed vs. The State* [2003 MLD 1073 (Lahore)], *Faisal Muhammad Hassan vs. The State* [2004 PCr.LJ 266 (Peshawar)] and *Muhammad Tanveer vs. The State* (PLD 2017 SC 733), learned counsel prayed for grant of post arrest bail to the petitioner.

5. Learned Special Prosecutor, NAB, supported the orders dated 19.03.2020 and 30.04.2020, passed by the Judicial Magistrate, Section-30(West), Islamabad, and (Duty) Additional Sessions Judge-West, Islamabad, respectively, and submitted that the petitioner is a habitual offender as he was arrested in another FIR No.02/2020, dated 01.01.2020, which was registered through complaint dated 30.12.2019, for making fake calls from the cell No. 0311-9407777 to Deputy Inspector General Police, Operations Lahore, by impersonating himself as Col. Tariq, D.G. NAB, for transfer of a constable; that the accused after release on bail repeated the offence and contacted M. Adil Khattak, CEO of Attock Refinery Limited for a deal of petroleum through cell No. 0300-5524725 to; that the USB containing the conversation between the petitioner impersonating himself as Irfan Mangi, D.G. NAB, and M. Adil Khattak, CEO, ARL, has also been furnished and made part of the record vide memo of recovery dated 07.03.2020; that sufficient incriminating material is available on the record which establishes the involvement of the petitioner in the offence; thus, he opposed the grant of bail to the petitioner.

5. Arguments heard. Record perused.

6. Present FIR No. 80/2020, dated 19.02.2020, was registered against the petitioner for impersonating himself as Irfan Mangi, D.G. NAB, and contacting the public through his two cell phone Nos. 0300-5524725 and 0311-9407777. Record revealed that for similar offence FIR No. 02/2020, dated 01.01.2020, has also been registered against the petitioner for making fake call from cell No. 0311-9407777, to DIG, Operations, Lahore, impersonating himself as Col. Tariq, D.G. NAB, for transferring a constable. The petitioner was granted bail in FIR No. 02/2020, dated 01.01.2020, by Judicial Magistrate, however, on the ground that the accused has misused the concession of bail by repeating the similar offence, the bail in the present case was dismissed vide orders dated 19.03.2020 and 30.04.2020. During investigation, the CDR of the cell phone Nos. 0300-5524725 and 0311-9407777, have been obtained which reflect the CINC of the

accused with the cell numbers. Perusal of the record revealed that numerous complaints have been received to the NAB about the petitioner for impersonating himself as D.G. NAB and asked for undue monitory and other favours. The record also transpires that after being released on bail in FIR No. 02/2020, dated 01.01.2020, the petitioner repeated the offence of deceiving public for undue favours and earn money by posing himself as D.G. NAB. The petitioner, therefore, has misused the grant of bail which disentitled him for post arrest bail in the instant case. There is no cavil on the principle that grant of bail is a rule and refusal is an exception in the offences which do not fall under prohibitory clause, however, in the present case, the petitioner as per available record, appears to be habitual offender as despite releasing on bail in the similar offence, has again approached various persons through same cell phones posing himself as D. G. NAB, as such his conduct disentitled him for grant of concessionary bail. In this regard, the guidance has been sought from the judgment of Hon'ble Supreme Court titled as *Muhammad Faiz vs. The State (2015 SCMR 655)*, wherein the Hon'ble Apex Court has observed as under:

We may observe that right of an accused to the concession of bail in a cognizable offence is not absolute. It is the discretion which a Court exercises by transferring the custody of an accused from Jail to the Court, which discretion is normally withheld if the accused abuses the concession by repeating the offence after the grant of bail. The criminal cases against the petitioner prior to the case in hand, prima facie, attracts the aforesaid established norms.

7. In view of the above, therefore, the instant bail petition is dismissed being devoid of merits. However, it is needless to mention that 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

M. Junaid Usman