

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 201-B of 2020.

Salman Ejaz.
VERSUS
The State, etc.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
08.04.2020.	Sardar Muhammad Zardar, Advocate for the petitioner. Mr S.M. Tayyab, DAG. Mr Kashif, SI/I.O. FIA with record.	

The petitioner Salman Ejaz son of Ejaz Ahmed has sought post arrest bail in case, F.I.R. No. 69, dated 06.02.2020, registered under sections 18 and 22 of Emigration Ordinance, 1979 and sections 420/468/471/109 of Pakistan Penal Code, 1860 (hereinafter referred to as the "**FIR**") at Police Station FIA/AHTC, Islamabad.

2. Brief facts as alleged in the FIR are that the petitioner is alleged to have been engaged in the illegal business of human trafficking and pursuant thereto he had received Rs.0.12 million from one Chanar Gul for sending him and his family abroad. The petitioner had also got affixed fake arrival/departure stamps and fake visa on their passports. Hence, the instant F.I.R.

3. The learned counsel for the petitioner has contended that; allegations against the latter are false, frivolous, baseless and concocted; the petitioner has been falsely involved in the instant case with malafide intention and ulterior motives of the prosecution; despite being on physical remand, no incriminating material was recovered from him; the

petitioner has no concern whatsoever with the alleged offences; there is no direct or indirect evidence against the petitioner; offences do not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner has no criminal record; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; the petitioner has been incarcerated for two months; story as narrated in the FIR is false, frivolous and vexatious; report under section 173 of Cr.P.C. has not been submitted before the learned trial Court; offences under sections 18 and 22 of the Emigration Ordinance, 1979 are not made out on the basis of the contents of the FIR; there is delay of four months in registration of the instant case; no specific date or time has been mentioned in the FIR regarding the alleged offences; no inquiry was conducted before registration of the instant case; the petitioner is an innocent person; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; further incarceration of the petitioner will not serve any useful purpose; the case against the petitioner is that of further probe; hence the learned counsel has urged that the petitioner be released on bail.

4. The learned Deputy Attorney General appeared alongwith Kashif, S.I. They have contended that; the petitioner had received substantial amount from one Chanar Gul; the petitioner is involved in the commission of the alleged offences and specific role has been attributed to him; the offences allegedly to have been committed by the petitioner fall within the prohibitory clause of section 497 of Cr.P.C; recovery has been affected from the petitioner; deeper appreciation of evidence at bail stage is not permissible; the petitioner was engaged in illegal human trafficking; hence prayed for dismissal of the instant petition.

5. The learned counsel for the petitioner and the learned Deputy Attorney General has been heard and record perused with their able assistance.

6. Perusal of record shows that the alleged occurrence had taken place in October, 2019 but the exact date and time has not been mentioned in the FIR. The instant FIR was registered on 06.02.2020 i.e. after a period of four months. The petitioner was arrested in the instant case on 07.02.2020. The petitioner has been incarcerated for two months. Report under section 173 of Cr.P.C. has not been submitted before the learned trial Court as yet. Chanar Gul was not made as an accused in the instant case. The case of the prosecution is only to the extent that the petitioner is alleged to have received money from one Chanar Gul and that when the latter presented application for obtaining the visa, it was revealed that some documents were alleged to be forged. The presenter of the documents alleged that they were given to him by the petitioner. The Investigating Officer could not show sufficient incriminating material to the effect that the ingredients of the offences under sections 18 and 22 of the Emigration Act, 1979 to the extent of the petitioner were fulfilled. Whether or not the petitioner had given forged documents to the presenter requires further probe. This crucial aspect requires further probe. The petitioner has no criminal record. His continued custody is not likely to serve any useful purpose at this stage as the investigations qua him have been completed. This Court is, therefore, of the opinion that the petitioner is entitled to bail.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is **allowed** and the petitioner is **admitted** to bail, subject to furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees two hundred thousand only) to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

Asad K/*