

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.70/B/2020

Muhammad Naeem

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.
(04)	14.02.2020	Mr. Naveed Raza Mughal and Mr. Ikram Haider, Advocates for the petitioner. Mr. Faisal Bin Khurshid, Advocate for respondent No.2. Barrister Muhammad Mumtaz Ali, AAG. Raja Ishtiaq Ahmed, D.G (Legal), IESCO. Baber Mehmood, XEN Complaint, IESCO. Mushraf Ikram, R.O-1, IESCO. Sajid, Inspector, FIA.

MOHSIN AKHTAR KAYANI J. Through the instant petition, the petitioner has applied for his post arrest bail in case FIR No.10/19, dated 02.08.2019, U/S 420, 464, 468, 471, 473, 419, 409, 109 PPC read with section 5(2) PCA, 1947 Police Station FIA, Anti Corruption Circle, Islamabad.

2. Brief facts as referred in the FIR are that consequent upon enquiry No.90/2019 of P.S. ACC FIA, Islamabad, it transpired that Mr. Muhammad Naeem Ex-RO-1, IESCO Sub-division-1, Islamabad, Khalid Mehmood, Commercial Assistant, CSO-1, IESCO Div-1, Islamabad, Muhammad Rafique, the then Accounts Assistant RO-1, IESCO Sub-division-1, Islamabad and Gul Khatab (a private person) in connivance with each other prepared and posted bogus scrolls relating to IESCO

Consumer Bills using fake statements alongwith bill stubs with fake bank stamps of an amount of Rs.43 Million (approximately) in the month of June 2019 only. They also got cleared and verified all these bogus scrolls and stubs and reconciled them with the bogus monthly bank statements through Mr. Khalid Mehmood Commercial Assistant. These cleared and reconciled bogus scrolls and fake bank statements were then forwarded for further posting in the IESCO online system at Computer Section. As per interim report of IESCO Departmental Enquiry Committee, said amount has been found as Rs.207,752,411/- for a period from July 2018 to June 2019. Hence, these persons have allegedly caused colossal loss to national exchequer by misuse of authority, criminal misconduct and breach of trust. The above narrated facts prima facie constitute offences U/S 420, 464, 468, 471, 473, 409, 109 r/w 5(2) of PCA 1947. Therefore, after approval, a case has been registered against (1) Muhammad Naeem, RO IESCO Sub-Division Taxila (2) Kahlid Mehmood, Commercial Assistant, CSO-1, IESCO Sub-Division-1, Islamabad (3) Muhammad Rafique, Accounts Officer, IESCO Sub-Division, Talagang, Distt. Chakwal and (4) Gul Khatab

3. Learned counsel for the petitioner contends that petitioner/Muhammad Naeem was ex-RO-1, IESCO Sub-Division-I, Islamabad and he was not authorized to prepare the bogus scrolls as alleged

in the FIR nor he incorporated any entry in the record, through which, it could be assumed that he is involved in the alleged scam of different fake scrolls of the IESCO; that being the countersigning authority he has signed the record, in which there was no difference in the reconciliation statement known as (CP-48) and as such said reconciliation statement was prepared by the lower staff, which has been processed through him and he has no direct role in this regard; that the investigation has been completed and as such petitioner is no more required for the purpose of investigation; that challan has been prepared and petitioner is entitled for concession of post arrest bail.

4. Conversely, learned Assistant Attorney General as well as learned counsel for respondent No.2/IESCO contend that it is an organized crime, in which accused persons in connivance with the official of IESCO Billing Department Computer Section and Finance directly embezzled more than 03 million rupees and caused financial loss to the public exchequer as well as to individuals by preparing the fake scrolls and CP No. 48 (Bank Reconciliation Statement) after receiving direct cash from the individuals and from the company; that the petitioner is the Ex-Revenue Officer of IESCO, Sub-Division-I, Islamabad, who was jointly working with the other co-accused from the stage of preparation of the scrolls in the Computer Section till its clearance in CP-48 (Bank Reconciliation

Statement), therefore, he is not entitled for any concession of post arrest bail.

5. Arguments heard and record perused.

6. Perusal of the record reveals that the complainant got lodged the FIR with FIA Authorities, which has been registered after detailed inquiry by FIA (ACC). The tentative assessment of the record reveals that Muhammad Naeem Ex-RO-1 IESCO Sub-Division-1, Khalid Mahmood Commercial Assistant CSO-1 IESCO Sub-Division-1, Muhammad Rafique Accounts Officer IESCO Sub-Division-1, Islamabad and Gul Khatab private person in connivance with each other prepared and posted bogus scrolls relating to IESCO Consumer bills using fake accounts, managed and reconciled all the bogus monthly statements from the offices of IESCO, Computer Section, Finance Directorate through facilitation in the online system and as a result of the same loss of Rs.300 million or above has been caused to public exchequer as well as IESCO.

7. The allegation referred in the FIR spells out that the role of Muhammad Naeem/petitioner was Revenue Officer and he remained posted on the said position as CSO-1, Islamabad from April, 2015 to October, 2018. During the said period, the other officials of IESCO have prepared fake scrolls by manually feeding incorrect data while the petitioner has not verified the said data despite his duty and became part of the said scam. The feeding of bogus

scrolls of Bank of Punjab, Blue Area Branch to the consumer account and hiding remittance with online collection being maintained in the said branch of Bank of Punjab was also initiated in the tenure of present petitioner.

8. During the course of investigation, Hur Hussain, Syed Hassan Husaib Gillani, Muhammad Irfan, Raja Nisar Ahmad and Syed Hassan have recorded their statements under Section 161 Cr.P.C. to that extent that they have paid different amounts and their electricity bills to the petitioner, who in return extended different discounts and returned the paid bills to them, but all those bills have not been paid, rather fake stamps have been used in those bills by the petitioner. As such, receiving the payment by the petitioner from the above mentioned prosecution witnesses falls within the meaning of Section 5 of PCA, 1947, which imposes a heavy duty upon the public servant, who accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward is an offence in terms of Section 161 PPC, with or without consideration for themselves, as such this act amounts to abuse of official position for illegal gains, which itself is a corruption.

9. The tentative assessment of record reflects that bogus scrolls were submitted before the petitioner for the purpose of verification of CP-48 (commercial

procedure), which exclusively falls within the domain of the petitioner being the Revenue Officer for verification and comparison of the statement. As per investigation, the petitioner has not performed his duties diligently, rather accommodated and facilitated other co-accused persons and, *prima facie*, he is a part of the entire scam. The Investigation Officer as well as Departmental Inquiry Officers have confronted the petitioner with different record, which reflects his role.

10. In view of above position, petitioner could not be segregated on the basis of his role from the main case at this stage, although the petitioner has taken a stance that the co-accused namely Abid Mehmood, Asif Rehman, Tariq Mehmood Shah and Khalid Mehmood have been granted post arrest bail by this Court, but the case of the petitioner is not at par with the said co-accused persons and he being the senior official was in a position to verify the scrolls, whereby fraud has been played.

11. The record also reflects that entire fraud could not be managed without the involvement of key position of the petitioner. The offence with which the petitioner has been charged, especially Section 409 PPC read with Section 5(2) 47 of PCA, falls within the prohibitory clause of Section 497 Cr.P.C.

12. The other co-accused persons who have been granted post arrest bail have their different roles in the entire case, as such, the petitioner cannot claim his bail after arrest on the principle of

consistency as each accused person has his diverse role in the entire scam, whereas the present petitioner is an authority being the senior most official, who was responsible for verification of CP-48, therefore, the principle of consistency does not apply in *stricto sensu*. The petitioner could not be absolved from his official position, especially when he was connected with such hideous crime. Reliance is placed upon **2010 SCMR 1735 (Asif Ayub Vs. The State)**. Even otherwise, it is a white collar crime requiring detailed appreciation and assessment of alleged material, which could not be undertaken at bail stage.

13. Furthermore, Challan has been prepared and there is likelihood of its early submission in the Court. Even otherwise, petitioner is involved in non-bailable offence and bail could not be granted as a matter of right in such like cases.

14. For what has been discussed above, instant criminal miscellaneous is meritless and same is hereby **DISMISSED**. However, FIA authorities are directed to transmit the final report before the Court for the purpose of early adjudication of the matter.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN