

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Crl. Misc. No.740/BC/2019.

Babar Mehmood

Versus

Waqas Javed 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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| 16.01.2020. | Mr. Faisal Bin Khurshid, Advocate for the petitioner. Ms. Qurret ul Ain Ayesha, Advocate for respondent No.1. Barrister Mumtaz Ali, AAG. Sajid, Inspector, FIA alongwith record. Respondent No.1 in person. |
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Through instant Crl. Misc. petition, the petitioner has prayed for cancellation of post arrest bail granted to respondent No.1 vide order dated 06.11.2019, passed by learned Special Judge Central, Islamabad.

2. Learned counsel for the petitioner contends that respondent No.1 is nominated accused in case FIR No.10/2019, 02.08.2019, U/S 420, 464, 468, 471, 473, 419, 409, 109 PPC, read with 5(2) PCA, 1947, P.S Anti-Corruption Cell, FIA, Islamabad; that respondent No.1 got recovered one seal of UBL, which was used in the payment of utility bills of IESCO through fraud and misrepresentation and learned Special Judge Central considered respondent No.1 as civilian/non-governmental employee and granted post arrest bail, which is factually incorrect and as such the impugned order is perverse, illegal and contrary to record, which is liable to be recalled. In support of his arguments, learned counsel for the petitioner has relied upon *1999 P Cr. L J 1 (Rana Muhammad Safdar vs. Gulzar Ali alias Papoo and another)*,

PLD 93 Karachi 55 (Muhammad Akbar vs. Shah Zaman and 3 others), 2010 SCMR 1735 (Asif Ayub vs. The State), PLD 1989 [Peshawar] 83 (Jehanzeb Khan vs. Muhammad Yaqub and another), 2017 SCMR 616 (Haji Shahid Hussain and others vs. The State and another), 2015 Cr. L J 745 (Mansoor Iqbal vs. State) & PLD 1997 SC 545 (Imtiaz Ahmed and another vs. The State).

3. Conversely, learned counsel for respondent No.1 contends that respondent No.1 was working as Sweeper on daily wages in IESCO and he has nothing to do with the official duty, in which fraud has been committed in IESCO Division-I; that respondent No.1 remained behind the bars for almost three months, investigation has been completed to his extent and he has not misused the concession of post arrest bail.

4. I have heard arguments and gone through the record.

5. Perusal of the record reveals that FIR No.10/2019 was lodged on the complaint of petitioner Babar Mehmood, Deputy Manger (Operations) IESCO Division-I, Islamabad with the allegations that Muhammad Naeem RO-1, IESCO, Khalid Mahmood, Commercial Assistant, CSO-1, Muhammad Rafique, Account Assistant, RO-1 and Gul Khatab (private person) in connivance with each other prepared and posted bogus scrolls relating to IESCO consumer bills using fake statement alongwith bills stub with fake bank stamps of an amount of Rs.43 million approximately in the month of June, 2019. The petitioner/complainant got cleared and verified all these bogus scrolls and stub after conciliation from monthly bank statement, where-after departmental inquiry committee was constituted, the said committee has given its findings and it has been found that

amount of Rs.207,752,411/- was misappropriated/embezzled from period w.e.f. July 2018 to June, 2019 but in this entire scam the officials of Accounts Department, IT Section and Billing Section of IESCO were involved as reflected from bare perusal of FIR. Respondent No.1 is Sweeper and was appointed on daily wages, who was not assigned any duty for clearance of any accounts, management of IT system, scrolls or data entry, through which it could be assumed that he has performed any such official act. I have gone through the impugned order, operative part of which is reproduced as under:-

"The petitioner is not a govt employee, and main allegation against him is that he was working as sanitary worker instead of his brother. The petitioner is not nominated in the FIR, rather, he has been involved on account of statement made by his co-accused Muhammad Rafique. Apparently, he has no role in preparation of fake stamps and forged bills, and no embezzled amount has been recovered from him. Co-accused Tariq Hussain, who is also a private person has also been granted bail by the Hon'ble Islamabad High Court vide order dated 18.10.2019. Therefore, in my view, on the rule of consistency, the petitioner is also entitled for post arrest bail."

6. The above referred order clearly spells out that respondent is sanitary worker, whose role has properly been considered by learned Special Judge Central, Islamabad while granting post arrest bail, even during investigation nothing incriminating has been recovered from the petitioner except seal of the bank, which fact will be proved after recording of evidence. Four co-accused have been granted post arrest bail. Impugned order passed by learned Special Judge Central is within four corners of law and no illegality has been observed in it. The petitioner has failed to point out strong and exceptional ground, on the basis of which

the post arrest bail granted to respondent No.1 should be recalled. Moreover, the petitioner has failed to substantiate any requirement, which calls for cancellation of bail granted to respondent No.1 by Court of competent jurisdiction. Bail granted by competent Court can only be cancelled if bail granting order is illegal, erroneous, factually incorrect or resulted into miscarriage of justice, which are key ingredients of section 497(5), Cr.P.C as held in **1999 P Cr. L J 1 [Lahore] (Rana Muhammad Safdar vs. Gulzar Ali alias Papoo and another).** As such the requirement of law for cancellation of bail after arrest is not visible in this case. Hence, the instant Crl. Misc. petitions is without merits and is hereby **dismissed.**

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam