

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

Criminal Misc. No. 867-B/2020
Ahmed Jawad Butt
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.
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05.08.2020	Mian Muhammad Zafar Iqbal, for the petitioner, Ms Khudaija Ali, learned State Counsel, Mr. Shaheryar Tariq, Advocate for the complainant, Abdul Hameed SI with record.
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This is post-arrest bail petition by accused-petitioner (Ahmed Jawad Butt) in case FIR No.461 dated 26.09.2019, under Sections 420, 468, 471, 448 & 406 PPC, Police Station Koral, Islamabad.

2. According to the allegations, set-forth in the FIR, on 14.12.2018, complainant entered into agreement with petitioner regarding purchase of a shop situated in Falcon Heights, Gulberg Green, Islamabad and paid an amount of Rs.9.5 Million; petitioner issued allotment letter of the said shop but later on took its possession fraudulently, hence, the instant FIR.

3. Learned counsel for the petitioner contends that no forged letter has been prepared by the petitioner; that he issued a genuine letter and if there is any dispute between co-accused and the complainant, the same is of civil nature and in that respect civil litigation initiated by the complainant is already pending before the Court of competent jurisdiction; that Sections 420, 406, 471 and 448 PPC cannot be applied simultaneously and that case of the petitioner

calls for further inquiry, therefore, he is entitled to the concession of bail. Reliance is placed upon case law reported PLD 1996 Lahore 261, 1996 MLD 1345, PLJ 2010 Cr.C (Lahore) 875.

4. On the other hand, learned State Counsel assisted by the learned counsel for the complainant contends that the petitioner is nominated in the FIR with specific role; huge amount is involved in the case; sufficient incriminating material is available on record which *prima facie* connects the petitioner with the commission of alleged offence; that the petitioner remained fugitive from law and therefore, cannot ask for discretionary relief particularly when the material collected by the prosecution connects him with the commission of alleged offence.

5. Arguments heard, record perused.

6. The offences under sections 420, 448 & 471 PPC are bailable while offences under Sections 406 & 468 PPC although non-bailable but are not covered within the ambit of prohibitory clause of section 497 of Cr.PC wherein bail is to be granted as a matter of right.

7. The Hon'ble Supreme Court of Pakistan in a recent judgment reported as "Muhammad Ramzan alias Jani V. The State and others" (2020 SCMR 717) has laid down the principle by holding that when alleged offence is outside the prohibitory clause of Section 497 Cr.P.C, grant of bail is a rule and refusal is an exception.

8. From the contents of FIR, no specific role of any of the accused could be ascertained at this stage and to adjudge the authenticity of a

document is the job of trial court after the recording of evidence.

9. Admittedly, civil litigation over the dispute is pending between the parties and when complainant had approached the civil court for adjudication of her civil rights by filing suit, then case to the extent of Section 468 PPC becomes one of further inquiry qua role of the petitioner. In this respect I am guided by the case law reported as "Muhammad Azeem. Vs. The State and another" (2011 SCMR 1533), wherein it is held that:-

"5. Having heard learned counsel for the parties and learned Law Officer at some length, we find that admittedly the complainant filed a civil suit two months prior to the registration of the instant case qua the same subject matter. There is no allegation of forgery and nothing has to be recovered from the petitioner. Sections 420 and 471, P.P.C. are bailable whereas sections 467 and 468 pertains to forgery, which issue would require further inquiry so far as petitioner's guilt is concerned. In the afore-referred circumstances, petitioner has made out a case for bail."

10. In view of above, instant bail petition is allowed, petitioner (Ahmed Jawad Butt) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

11. Needless to mention that above is only tentative assessment for the purpose of instant bail petition and shall not effect/influence trial of the case in any manner.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE