

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.779-B/2019

Mehmood ur Rehman

Versus

The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.01.2020	Ch. Zulfiqar Ali Hargan, Advocate for the petitioner Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General with Liaqat Ali S.I./F.I.A. Mr. Imran Shaukat Rao, Advocate for respondent No.2/complainant

Through the instant criminal miscellaneous petition, the petitioner, Mehmood ur Rehman S/o Haji Ramzan, seeks post-arrest bail in case F.I.R. No.225, dated 15.05.2019, registered under Sections 18/22 of the Emigration Ordinance, 1979 and Section 109 P.P.C. at Police Station F.I.A./AHTC, Islamabad.

2. Earlier the petitioner's post-arrest bail was dismissed by the learned Special Judge Central, Islamabad vide order dated 13.11.2019.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case; that the petitioner has no nexus with the commission of alleged crime; that the allegation levelled against the petitioner is only to the extent of abetment; that on the complainant's request to help out for the assurance of a visa for Sweden, the petitioner introduced the complainant to the co-accused, Azhar Iqbal, and the only role that could be ascribed to the petitioner is that of an introducer; that as regards abetment, i.e. Section 109 P.P.C. there is no evidence available on the record to connect the petitioner with the commission of alleged crime; that there is a substantial delay in lodging the F.I.R.; and that the petitioner is in judicial custody and not required for any further investigation. Learned

counsel for the petitioner prayed for the petition to be allowed and for the petitioner to be released on bail.

4. Learned Deputy Attorney-General vehemently opposed the bail petition by stating that the petitioner is nominated in the F.I.R. and the role ascribed therein was that he along with his co-accused had deceitfully received an amount of Rs.18,00,000/- from the complainant (Muhammad Zubair Fayyaz) on the pretext of sending him to Sweden for employment; that subsequently, accused failed to send the complainant abroad as promised and also did not return the amount; and that the petitioner along his co-accused had deprived the complainant of his hard earned money under the garb of sending him abroad. Learned Deputy Attorney-General has prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

6. Brief facts as narrated in the F.I.R. are that accused/petitioner while not being a licensed/authorized agent, with the connivance of his co-accused Azhar Iqbal, on the pretext of sending the complainant to Sweden for employment deceitfully took an amount of Rs.18,00,000/- from the complainant. The accused persons were alleged to have received the said amount Subsequently, the accused persons failed to send the complainant abroad as promised and also did not return the amount.

7. This petition is for bail after arrest and only tentative assessment is required at this stage. While going through the F.I.R., it has been noticed that the complainant did not provide the exact date of the occurrence. In the column of date and hour of the occurrence, only the year 2018 has been mentioned,

whereas the date when the matter was reported to the F.I.A. was 15.05.2019. Furthermore, the record shows that the complaint against the petitioner and co-accused was filed by the complainant to the Director F.I.A. on 09.01.2019. Thus, there is a considerable unexplained delay in lodging the F.I.R. which *prima facie* shows that the F.I.R. has been got registered after due deliberation and consultation. Although in the F.I.R., the petitioner has been assigned the role of introducing the agent/co-accused Azhar Iqbal (who deceitfully took Rs.18,00,000/- from the complainant) with the complainant for sending him abroad/Sweden, however, as regards the petitioner there is no allegation that he received any amount. As mentioned above, the said payment was alleged to have been made by the complainant to the co-accused, Azhar Iqbal. The questions of sharing common intention and vicarious liability of the petitioner in this case are to be determined by the learned trial Court after recording of evidence. Furthermore, co-accused who is apparently the main culprit for depriving the complainant of his hard earned money, i.e. 18,00,000/- and the investigation to the extent of the petitioner is said to have complete. Therefore, his further incarceration would serve no useful purpose. Considering the above facts and circumstances of the case, the petitioner has succeeded to make out his case for grant of bail on the ground of further inquiry.

8. In this view of the matter, the instant bail petition is allowed and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs.5,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court. The observations made herein above are tentative in nature and shall have no bearing on the merits of the case. The learned trial Court is directed to decide the case expeditiously. It is clarified

that the observations made herein above are tentative in nature and the same shall not prejudice either party during the course of the trial. The grant of bail is also subject to the condition that the petitioner shall appear on each and every date of hearing before the learned trial Court unless exempted by the learned trial Court. In case, the petitioner fails to appear before the learned trial Court on any date of hearing, the bail shall stand cancelled.

9. Petition allowed. Bail granted.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*