

Form No: HCJD/C  
**JUDGEMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

Case No. W.P.No.972/2015

Amir Ahmad  
**Vs**  
Government of Pakistan, etc.

**Petitioner by:** Muhammad Zubair Khalid, Advocate.  
**Respondents by:** Malik Feisel Rafique, DAG.  
Muhammad Asgher Ali Balooch,  
Inspector FIA.  
**Date of decision:** 03.06.2015

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**AAMER FAROOQ, J.-** Through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks his discharge from being extradited to USA.

2. The facts, in brief, are that respondent No.3 executed the arrest warrant of the petitioner under section 75 Cr.P.C. for offence under section 7 of the Extradition Act, 1972 and in consequence thereof the petitioner was taken into custody by respondent No.2. On 18.09.2014, the petitioner was sent to judicial lockup at Camp Jail Adyala, Rawalpindi, and on 19.09.2014 he was supplied with statement of documents under section 241 of Cr.P.C. The proceedings under section 10 of the Extradition Act, 1972 were duly conducted and the report was forwarded by the Additional District Magistrate / Inquiry Magistrate to Ministry of Interior, Government of Pakistan. The petitioner applied for post-arrest-bail through Criminal Miscellaneous No.610-B of 2014 before this Court which was dismissed vide order dated 18.11.2014. Against the said order, the petitioner filed Criminal Petition No.711 of 2014 before the Hon'ble Supreme Court of Pakistan which was also dismissed vide order dated 20.01.2015. The petitioner also filed Criminal Revision (Crl.No.87/2014) against order dated 17.10.2014 passed by Additional Deputy Commissioner/Additional District

Magistrate/Inquiry Magistrate, ICT, Islamabad which was dismissed vide order dated 12.01.2015 by this Court. The petitioner assailed the referred order of this Court by way of Criminal Petition No.122/2015 wherein vide order dated 25.03.2015 leave to appeal was granted to the petitioner. On 22.04.2015, the petitioner withdrew the appeal which was dismissed as withdrawn by the Hon'ble Supreme Court of Pakistan vide order dated 22.04.2015. In the instant petition, the petitioner has assailed his custody in light of sections 5 & 12 of the Extradition Act, 1972 and seeks his discharge from being extradited to USA.

3. The learned counsel for the petitioner *inter alia* submitted that under section 12 of the Act, if the fugitive offender is not conveyed out of Pakistan within two months after committal, the High Court may release / discharge him unless sufficient cause is shown to the contrary. It was further contended by the learned counsel that under section 5(2)(f) of Extradition Act, 1972 the petitioner cannot be surrendered because he is an accused in cases in Pakistan and the trial is under way. The learned counsel in support of his contentions has placed reliance on case titled "*Mirza Iftikhar Mehmood Vs Area Magistrate*" (PLD 2009 Lahore 215), "*Suran Narayan Jha and others Vs Emperor*" (AIR 1935 Patna 419), "*Ahtabar Gul and others Vs The State*" (PLD 2014 Peshawar 10), "*Muhammad Azeem Malik Vs Government of Pakistan and others*" (PLD 1989 SC 519).
4. The learned Deputy Attorney General opposed the petition and submitted that the petitioner has chequered history and if discharged would abscond. It was further contended that the Hon'ble Supreme Court of Pakistan vide order dated 20.01.2015 dismissed the appeal of the petitioner on the same ground. It was further contended that the petitioner cannot be conveyed out of the country on the basis that the cases against him are pending in Pakistan.
5. The petitioner in the instant petition seeks his discharge under section 12 of the Extradition Act, 1972. For the sake of brevity, the referred provision of law is reproduced below and is as follows:

**"Discharge of person apprehended if not surrendered within two months.**

*If a fugitive offender who in pursuance of this Act, has been taken into custody to await his surrender, is not conveyed out of Pakistan within two months after such committal, the High Court, upon application made to it by or on behalf of the fugitive offender and upon proof that reasonable notice of the intention to make such application has been given to the Federal Government, may order such prisoner to be discharged unless sufficient cause is shown to contrary.*

6. The plain reading of the referred provision shows that if the fugitive offender is not conveyed out of Pakistan within two months after his committal then he may be discharged by the High Court on application made by or on behalf of the fugitive offender unless there is a sufficient cause to the contrary. The petitioner, in the instant petition has also taken stance that he may not be surrendered to the Government of USA in light of section 5 (2)(f) of the Act, *ibid*. The relevant section is as follows:

**"5. Liability of fugitive offenders to be surrendered.—**

*(2) No fugitive offender shall be surrendered.*

*(f) If he has been accused of some offence in Pakistan, not being the offence for which his surrender is sought, or is undergoing sentence under any conviction in Pakistan, until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise."*

7. The government of USA requested for extradition of the petitioner as he was arrested there on 19.08.2013 on the charges of bribery, money laundering and false statement etc. Later on; he was released on bond with the condition that he would surrender his passport and other travelling documents to the Court of USA. In the year 2014, he violated the terms of his release and did not report to the Court and entered in Pakistan on a false passport in the name of Faisal Shami. He was arrested at Lahore Airport and two cases were registered against him by FIA, Lahore, (FIR No.417/2014 and 42/2014). In both the cases, he was released on bail. The petitioner was arrested on

17.09.2014 as a result of issuance of warrant of arrest by Extradition Magistrate on request of USA government. Later on, he was shifted to Islamabad from Lahore with the permission of Special Judge Central, Lahore, on 17.09.2014. Inquiry against the petitioner was conducted under section 10 of Extradition Act, 1972, in which it was concluded that he was allowed to be extradited to the requesting state. The petitioner at present is confined in Camp Jail, Lahore and Special Judge Central, Lahore, has issued orders to keep him in judicial lockup till the decision of the cases registered with FIA, Lahore. In this behalf, necessary letter has been issued to Government of USA.

8. Under section 5 (2)(f) of the Extradition Act, 1972 the petitioner cannot be extradited to USA until the above mentioned criminal cases against him are decided and in case he is punished for the same, he has served the sentence.

9. Under section 12, the jurisdiction of this Court is confined to discharge of fugitive offender in case he has not been extradited within two months of arrest. There is no basis or justification for discharge of the petitioner in the present case inasmuch as he cannot be extradited due to the fact that above referred FIRs are pending against him and the case(s) is under trial. The bail of the petitioner in the matter has been dismissed by the Hon'ble Supreme Court of Pakistan vide its decision dated 20.01.2015. The reason for dismissal of the bail is mentioned in Para-3 of the judgement of the Hon'ble Supreme Court which is reproduced and is as follows:

*"Keeping in view his previous conduct of jumping bail in the USA and travelling to Pakistan on fake travelling documents, it is likely that he would violate the order of extradition in order to avoid facing serious charges of corruption of huge amounts in USA. We, therefore, do not consider it appropriate that the petitioner would be released on bail. The petition is, therefore, dismissed and leave declined."*

10. The failure on part of the government of Pakistan to extradite and convey the petitioner out of Pakistan is due to

pendency of aforementioned criminal cases against the petitioner and are being tried by Special Judge Central, Lahore. The cases relied upon by the petitioner are not relevant in the facts and circumstances of the present case inasmuch as the proper inquiry proceedings were conducted under section 10 of the Extradition Act, 1972, and there is no cavil to the proposition that this Court under section 12 of the Act has jurisdiction to discharge the petitioner. The petitioner, as mentioned above, seeks his discharge in the instant petition and not release on bail, ever otherwise the bail of the petitioner has been dismissed by the Hon'ble Supreme Court of Pakistan. In the facts and circumstances of the present case as mentioned above, no ground for discharge of the petitioner is made out.

11. For the foregoing reasons, the instant petition is without merit and is dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

Announced on this 19th day of June, 2015 in open court.

**JUDGE**

*Approved Per Reporting*

\*M.Amir\*