

Form No.HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 1005 of 2017.

Sharjeel Inam.
Versus
FOP, etc.

S.No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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20-03-2017.

Raja Muhammad Shakeel Abbasi and Mr Farooq H. Naik, advocates for the petitioner alongwith petitioner.
Sardar Muzaffar Ahmad Khan, ADPG, NAB.
Ch. Raza Bashir, Inspector, NAB.

The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking protective / transitory bail so as to enable him to approach the competent Court in the Province of Sindh for bail.

2. The facts, in brief, are that the petitioner namely, Sharjeel Inam is an elected member of the Provincial Assembly of the province of Sindh. The petitioner had left the country in 2015 and since then he had been residing abroad. During his absence from the country, warrant for his arrest was issued. The petitioner had filed a petition seeking pre-arrest bail before the learned Sindh High Court at Karachi. The bail was granted but latter dismissed since the petitioner could not appear before the said Hon'ble Court. Another petition seeking protective bail was also filed before the Hon'ble Lahore High Court but the same was also dismissed due to his absence. The petitioner

was out of the country when the said petitions were filed and dismissed.

3. It is the case of the petitioner that he was prevented from landing at Karachi and thus could not appear before the Court on account of threats to his life. The instant petition was filed and was fixed for hearing on 15.03.2017. However, the learned counsel for the petitioner had made a statement before us on the said date that the latter is booked on a flight, which would land at the Benazir International Airport, Islamabad. He had further stated that the petitioner shall surrender before this Court and that appropriate order be passed so as to enable him to do so. Pursuant to this Court's order, dated 15.03.2017, the petitioner has today surrendered before this Court. It is alleged that the cases against him are politically motivated and that he may be enabled to approach the competent Court to seek justice by granting transitory / protective bail.

4. The learned Additional Deputy Prosecutor General, NAB, Sardar Muzaffar Ahmad Khan, put up appearance and accepted notice. He opposed the petition and argued that the petitioner has not approached this Court with clean hands and has suppressed material facts. It is the case of the learned ADPG that the petitioner is not entitled to bail since he remained a fugitive from law and has been declared as a proclaimed offender by the competent Court. He has placed reliance on "*Muhammad Yaqoob versus The State*" [1995 P.Cr.L.J. 1882], "*Alam Zaib versus Haji Muhammad Ramzan and another*" [2000 MLD 1718], "*Ch. Haqnawaz versus Haq Nawaz Dhudi and others*" [2004 MLD 1095], "*Awal Gul versus Zawar Khan and others*" [PLD 1985

S.C. 402] and "Murad Khan versus Fazle-e-Subhan and another" [PLD 1983 S.C. 82].

5. The learned counsels for the petitioner on the other hand have contended that the latter is being unnecessarily harassed and efforts are being made by the respondents to deprive him from his fundamental right of having access to the competent Court.

6. The learned counsels for the petitioner and the learned Additional Deputy Prosecutor General, NAB have been heard and the record perused with their able assistance.

7. It is not denied that the petitioner was abroad for the past two years. The learned ADPG, NAB has not placed on record any material to show that the petitioner had been summoned or that notices were served on him in the manner prescribed under the National Accountability Bureau Ordinance, 1999 (hereinafter referred to as the "**Ordinance of 1999**"). The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution by surrendering himself before this Court and seeking transitory / protective bail so that he may approach the competent Court.

8. It is settled law that protective bail is granted to an accused so as to enable him or her to approach the concerned Court of another province for the purposes of obtaining pre-arrest bail. An order in respect of granting protective bail is for a specified period merely to protect an accused till he or she has approached a competent Court. It is not in the nature of granting an anticipatory or pre-arrest bail under Section 497 of the Criminal Procedure Code, 1898

(hereinafter referred to as the "**Cr.P.C**") nor disentitles him or her to seek a remedy before the concerned competent Court. Moreover, while granting protective bail merits or demerits of the case are not discussed or considered. The practice of allowing protective bail is adopted so as to encourage an accused to surrender himself to the custody of a competent Court for seeking a remedy. The Hon'ble Mr Ajmal Mian, Chief Justice, as he then was, has extensively surveyed the statutory provisions and the precedent law in the context of granting protective bail in the case titled "*Malik Mukhtar Ahmad Awan versus The State*" [1990 P.Cr.L.J. 617]. It has been observed and held as follows;-

"In my view, if a Police Officer can pursue an accused person for the purpose of arresting him anywhere in Pakistan irrespective of the fact that the offence has been committed in a particular province if a warrant of arrest is executable anywhere in Pakistan, it must follow that the competent Court where an accused person is to be arrested by a Police Officer without a warrant of arrest or where he is to be arrested in execution of a warrant of arrest, should have jurisdiction to grant interim relief in a fit case, if the dictates of justice so demand in order to enable the accused person to approach the competent Court in the Province concerned for bail".

9. A High Court, in exercise of jurisdiction under Article 199 of the Constitution and without going into the merits or demerits of the case, grants protection in order to enable an accused to approach the competent Court. The learned ADPG, NAB has vehemently argued that the conduct of the petitioner does not entitle him for the purposes of grant of protective bail. The abscondance of the petitioner has been argued as a factor for refusing to exercise our discretion. The august Supreme Court in the case titled "*Shahna Khan versus Aulia Khan and others*" [PLD 1984 S.C. 157] has held and observed that a fugitive from law and the Courts would lose some of his or her normal rights granted by procedural as well as substantive law. It has further been observed that "unexplained noticeable abscondance" disentitles a person to concession of bail notwithstanding the merits of the case. The august Supreme Court in the case of "*State versus Naseem ur Rehman*" [PLD 2005 S.C. 270] had granted bail to the accused for a period of two weeks in order to enable him to approach the competent Court because the latter had surrendered himself before the apex Court after remaining an absconder for a long time. In the case titled "*The State versus Malik Mukhtar Ahmed Awan*" [1991 SCMR 322], the august Supreme Court has observed and held that it is not an absolute rule that a fugitive under no circumstances be enlarged on bail. It has further been observed that abscondance would definitely constitute a relevant factor when examining the question of bail.

10. In the instant case, the petitioner is merely seeking protective bail and he has shown his bonafides by surrendering himself before this Court. The learned counsel

for the petitioner has made a statement before us that the latter could not land at Karachi due to serious threats to his life. However, we would avoid making any observation regarding the factum of abscondance or the dismissal of his earlier petitions filed before the High Courts of Sindh and Lahore, lest it may prejudice the case of either party before the competent Court. We are of the opinion that access to a competent Court is a fundamental right guaranteed under the Constitution. We feel that refusal to grant protective bail would tantamount to denial of the right of access to justice. Access to justice is fundamental to, and an integral part of the rule of law. Reference in this regard is made to "*A/- Jehald Trust and others versus FOP and others*" [PLD 1996 S.C. 324], "*Sh. Riaz ul Haq and another versus FOP and others*" [PLD 2013 S.C. 501], "*Khan Asfandiyar Wali and others versus FOP, etc*" [PLD 2001 S.C. 607] and "*Watan Party and others versus FOP and others*" [PLD 2012 S.C. 292].

11. As already noted, we are not required to decide the petition on merits or demerits of the case in the context of Section 497 Cr.P.C. The petitioner has shown his bonafides by surrendering before this Court and is only seeking protection so that his right to approach the competent Court or in other words access to justice be ensured. To the extent of this petition and for the purposes of granting protective bail we are satisfied that the abscondance of the petitioner is not unexplained. Nevertheless, this factor would indeed be considered by the competent Court to which access is being sought by the petitioner.

12. For the above reasons, the petitioner is granted protective bail for a period of fifteen (15) days i.e. till 04.04.2017, subject to furnishing bail bonds in the sum of Rs. 02 million (Rupees two million) with one surety in the like amount to the satisfaction of the Additional Registrar (Judl.) of this Court. The petitioner shall surrender before the concerned competent Court for seeking bail before arrest within stipulated period.

13. It is noted that this order shall cease to exist either on the expiry of the period specified in this order or on the date when the petitioner surrenders before the competent Court, whichever is earlier. In case the petitioner fails to surrender before the concerned competent Court within the stipulated period, then bail bonds executed by the petitioner pursuant to this order shall stand forfeited to the State. This order shall remain effective till 04.04.2017.

(MOHSIN AKHTAR KIYANI)
JUDGE

(ATHAR MINALLAH)
JUDGE


Asad K/Asad K/Asad K

Approved for reporting.

Blue Slip added.