

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

Crl. Misc. 252-B/2011
Syed Hamid Saeed Kazmi Versus The State

Date of Hearing: - 4th day of May, 2011.
For Petitioner: - Ch. Mushtaq Ahmad Khan, Sr. ASC.
For State: Mr. Muhammad Abid Raja learned Deputy Attorney-General with Ch. Niamat Ali AD/FIA/SIU & Khalid Naeem, AD (Legal) FIA.

ORDER

MUHAMMAD ANWAR KHAN KASI, J:-

The petitioner (Syed Hamid Saeed Kazmi, MNA/Former Federal Minister for Religious Affairs) through the instant petition seeks post arrest bail in case FIR No. 05, dated 12-11-2010, u/ss 409,34,109,420,468,467,471,3 & 4 PPC read with Section 5(2) 47 PCA, Police Station FIA/SIU, Islamabad.

2- The pilgrims of the Hajj had been raising hue & cry about the mis management, misconduct and high charges against the improper accommodation far from "**BAITULLAH SHARIF**" whereupon the hiring review committee of the Senate/ National Assembly submitted a report, on the basis of which a preliminary inquiry was conducted by the FIA authorities whereby it transpired that Rao Shakil Ahmad, Former DG Hajj by misusing his position and with the active connivance had paid exorbitant rates and advance amount against the hiring of 87 buildings and thus caused huge wicked loss to the public exchequer. After approval for investigation, the statements of concerned persons ~~were~~ recorded, which show that Rao Shakil Ahmad and Aftab-ul-Islam were fully involved in the offence for their personal gains.



3- In this regard, a report dated 13-12-2010 was also submitted by DG, FIA before the Hon'ble Supreme Court of Pakistan in suo moto reference No. 24/10, wherein he submitted that the Secretary, Ministry of Religious Affairs had not given any plausible explanation about constitution of the two member hiring committee instead of seven member committee as approved in Hajj Policy. According to the findings, the appointment of Rao Shakil Ahmad, DG Hajj was not transparent and he appears to be a hub of corruption and corrupt practices. His appointment was made on the recommendations of the Minister/Present petitioner and he had also written a letter for the issuance of official passport to Ahmad Faiz, who was appointed by DG Rao Shakil Ahmad as Building Supervisor. All these violations of rules were not checked by the Ministry and only the committee comprising two members had been taking care of all the affairs instead of seven members, otherwise they could have minimized the corruption. The report concludes that Secretary was having no control on the affairs of DG Hajj, who had assumed unchecked authority in all administrative and financial matters. The role of Ahmad Faiz had been ^{of} a middle man to collect the commission on behalf of others. He was appointed as Building Supervisor on the recommendations and directions dated 6-3-2010 of Minister for Religious affairs. After the conclusion of inquiry No. 25/2010 the FIA properly lodged the FIR and further investigated the matter. According to FIR, Rao Shakil Ahmad, Ex. DG Hajj had misused his official position and with the active connivance of Ahmad Faiz Shafi and others had acquired 87 buildings in Saudi Arabia for Hajj Pilgrims on exorbitant rates and had paid advance rent up to 30-50% against the previous practice of 15% advance, besides other violation of Government instructions by avoiding undue



benefits and thus caused huge wrongful loss to public exchequer and wrongful gains to themselves.

4- The grounds urged by the learned counsel in support of this petition are condensed to the following points:-

(i) That the petitioner has got no connection with the offence because under the Rules of Business 1973, the Secretary of the Division is responsible to duly execute the sanctioned policy and is responsible for the careful observance of the rules and in case of any material departure from it, he shall bring the matter to the notice of the Minister Incharge and if necessary to the notice of the Prime Minister or Cabinet, while the Minister Incharge shall be responsible for conducting the business of the Division in the Assembly;

(ii) That petitioner had no role in the constitution of hiring committee or in the hiring of accommodations, the interim report places all the responsibility upon Rao Shakil, Ex-DG and Aftab-ul-Islam, he had not passed any order about the appointment of Ahmad Faiz Shafi, who had been working with Ex. DG Rao Shakil, who had not only appointed him but also managed his release from the detention of *Makkah Almurkama* police,

(iii) That petitioner had also no role in the appointment of Rao Shakil Ahmad as DG Hajj as the special selection Board headed by Secretary Cabinet had selected Rao Shakil for the post and all the corruption in the Hajj 2010 was committed by him, being Chairman of the Hiring Committee alongwith its sole member Aftab-ul-Islam.

(iv) That involvement of the petitioner is political victimization as Senator Muhammad Azam Khan Swati and Umar Khan Ali Sherzai, Ambassador of Pakistan had made baseless allegations against him.

(v) That no property, moveable or immovable, was purchased by the petitioner or his family during

the period from July, 2009 till today and the alleged properties were purchased by his wife in the name of her children in May & June 2009 from her own saving incomes,

(vi) That there is no heavy transaction against his account, he is renowned religious scholar, Nazim-e-Aala Jamia Anwar-ul-Aloom Multan and has an unblemished neat and clean political career,

(vii) That petitioner is not a public servant, therefore, Section 5(2) Act II of 1947 is not attracted to his case.

(viii) That the offences do not fall under the prohibitory clause of Section 497(1) Cr. PC, and

(ix) That petitioner is in judicial custody, documentary evidence has already been collected by the prosecution, he is a chronic patient of heart as well as backbone and his ailment will be aggravated due to his continued detention.

5- In support of his contentions, the learned counsel relied upon case laws reported as 1995 SCMR 1249, 1995 SCMR 387, 2000 SCMR 107, 2001 SCMR 1040, 2002 SCMR 282, 2007 P Cr. L. J 1282, PLD 2003 Supreme Court 668, 2009 YLR 880, 2001 YLR 802, 2007 YLR 1024, 2010 YLR 2244, 2005 P Cr. L. J 1976, 2008 SCMR 196, 2004 SCMR 235, PLD 1956 Supreme Court (Pak) 417, 2010 P Cr. L. J 948, PLD 2011 Supreme Court 171, PLD 1995 Supreme Court 34 and PLD 1968 Supreme Court 310.

6- It was held in some of the dictums relied upon ~~that~~ that the bail ordinarily should not be withheld as a punishment and bail orders should be passed carefully as they involve the liberty of citizens. It is further held that for the purposes of bail, law should not be stretched in favour of the prosecution and any benefit of doubt must go to the accused. It is also held that the objection of criminal trial is to make the accused face the trial and basic idea is to enable him to answer the criminal prosecution rather than to rot him behind the bars.



7- Conversely, learned Deputy Attorney-General vehemently opposed the petition by stating that only tentative assessment is required at bail stage and lengthy arguments of the parties would be leading towards the final conclusion of the case, which may prejudice the plea of either party. He further submitted that review committee of Senate/National Assembly had given the findings about the corruption in accommodating the pilgrims and Ahmad Faiz Shafi had played the middle man role for obtaining the buildings on exorbitant rates, who was a habitual criminal but was posted as Building Supervisor. He submitted that on the basis of this review committee report, the matter was referred to the FIA for preliminary inquiry, while the Hon'ble Supreme Court of Pakistan also took cognizance of the case in suo moto reference No. 24/10. He referred to the appointment letter dated 7-3-2010 of Ahmad Faiz Shafi which clearly states that he was appointed on the directions of the Federal Minister i.e. present petitioner. He placed the said application on record which contains a direction in the hand of the petitioner for appointment/adjustment of Ahmad Faiz Shafi against a suitable position. It is further submitted that the petitioner had written a letter to the DG Hajj on 4-8-2010 for issuance of official passport to Mr. Ahmad Faiz Shafi, building supervisor. He also referred to letter dated 13-8-2010 by Rao Shakil Ahmad, Ex-DG in the name of Director, Department of Forgery of Passports and Immigration **Makkah AlMukarma** requesting that Ahmad Faiz Shafi be released as he has been appointed in the Ministry of Religious Affairs as 1st Officer for buildings in **Makkah AlMukarma** and he is in custody of papers belonging to DG Hajj. He stated that Mr. Rao Shakil had also sent the legal consultant and Advocate Mr. Muhammad Saleh Usman for his release. He also submitted that the moveable and



immovable properties of the petitioner are not in accordance with his known sources of income, petitioner is covered by the definition of public servant under section 21 of PPC, he is properly getting medical treatment in the Jail, the offences are non-bailable. He finally submitted that the case has stirred a commotion in the society and the Government of Pakistan had to cut a sorry figure in the world eyes, the pilgrims went through mental torture and physical agonies due to this callous behaviour and since the offences are non bailable, the petitioner is not entitled to concession of bail. He ended his arguments by stating that challan of the case has already been submitted in the competent court and the petitioner can take all the pleas during the trial. Learned Standing Counsel, in support of his arguments, relied upon case laws 1995 SCMR 1249, 1995 P Cr. L J 1802 and PLD 1995 Kr 73 which are on the point that criminal cases are not identical and every case has got its own merits.

8- Earlier, bail was refused to the petitioner by the learned Special Judge Central, vide order dated 14-4-2011.

9- Heard & record perused.

10- The letters on record suggest that Ahmad Faiz Shafi was appointed as Building Inspector without remuneration on the direction of present petitioner. The review committee of Senate/National Assembly had given a detailed report about the elements of corruption in hiring of low standard buildings at far off place against exorbitant rates. The FIR was lodged after proper inquiry and recording statements of concerned persons-witnesses. There is no ill will shown by the petitioner against the FIA or the review Committee. The Hon'ble Supreme Court had also issued direction for impartial investigation into the matter, whereupon the investigation team visited *Makkah Almurkama* to find out the

facts of the case. As far as application of Section 5(2) Act II of 1947 is concerned, it will be considered by the Trial Court at proper stage. At present, without deeper appreciation of material available, the active role and connivance of Rao Shakil Ex-DG and Ahmad Faiz Shafi cannot be overruled, whose appointments were facilitated due to the insistence of present petitioner. I am again refraining myself to discuss the evidence, but all these documents and the inquiry reports, prima facie, connect the present petitioner with the commission of offence and, therefore, at this stage, no case for bail is made out.

11- The case law referred to by the learned counsel for the petitioner are distinguishable as they are on the point that concession of bail is general rule in cases falls out of the ambit of Section 497(1) Cr. PC and when the case becomes of further inquiry but at the same time it is also a principle that every case of further inquiry does not confer a right to the accused for the grant of bail. Even otherwise, every criminal case is to be seen in its own perspective.

12- In view of above discussion, I hold that petitioner is not entitled to the concession of bail. Resultantly, the instant petition stands dismissed. Needless to mention that above observations are only tentative in nature and will, of course, have no impact upon the merits of the case.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

Announced in Open Court, on this 13th day of May, 2011.

Done & signed
M. Sohail
Issued
on 03-06-11

JUDGE

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