

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No. 195 of 2019

Ayaz Ahmed Khan & another

Versus

The State & another.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	17.01.2019	Sheikh Rizwan Naeem, Advocate alongwith petitioners Ayaz Ahmed Khan and Seema Nawab.

This petition has been placed before this court after removal of objection in continuation of the proceeding dated 15.01.2019 undertaken in objection case No. 540 of 2019.

2. Through this petition, petitioner has prayed for grant of anticipatory/protective bail in connection to applications No. 3716/C and 3717/C dated: 02.01.2019 for registration of FIR submitted by one Sherzada against the present petitioners in the Police Station Mangora, Sawat, as the petitioners apprehend their arrest by the local police at Sawat while approaching the concerned police station.

3. Learned counsel for petitioners inter-alia contends that petitioner No.1/Ayaz Ahmed Khan and petitioner No. 2/Mst. Seema Nawab are permanent residents of Islamabad and both are husband and wife, working in Islamabad; that respondent No.2/Sher Zada, resident of District Sawat has filed an application in P.S. Mangora, Sawat against the petitioners for registration of criminal case on the basis of dishonored cheques of Rs. 60,00,000/- and Rs.30,00,000/-; that respondent No.1/complainant has obtained the cheques amounting to Rs.30,00,000/- and Rs.60,00,000/- respectively from the petitioners under duress and coercion in order to grab the

property i.e. plot No 2 street No.163 Sector G-13/3, Islamabad and these cheques were used by the complainant in District Sawat.

4. At this stage, when learned counsel for petitioners has been confronted regarding maintainability of anticipatory/ transitory bail application, especially when FIR U/S 154 Cr.P.C. has not been registered by the concerned SHO in District Sawat. Learned counsel for petitioners has relied upon judgment reported as 1978 CriLJ 677 (Suresh Vasudeva Vs The State & another), and 1982 CriLJ 2197 (In Re: Digendra Sarkar and Ors. Vs Unknown).

5. Be that as it may, the concept of anticipatory bail is developed in order to provide due protection to any individual to approach the Court of law for his legal rights, whether any FIR has been registered or otherwise, as the State is under obligation to provide due protection to its citizens in terms of Articles 4 & 9 of the Constitution of Islamic Republic of Pakistan, 1973 and the High Court is empowered to grant relief. Reliance is placed upon the judgment rendered by the Hon'ble Apex Court in reported case PLD 1977 SC 273 (Ch. Zahur Ilahi, M.N.A Vs The State) wherein it was held that:

"The High Court unquestionably has this power under Article 199 of the Constitution of the Islamic Republic of Pakistan (hereinafter called, the Constitution) and it should have exercised this jurisdiction when the question of liberty of a citizen was involved even though the Courts had before it the applications under section 498 of the Code of Criminal Procedure only. I held this view in the case of Manzoor Ilahi v. Federation of Pakistan, I still adhere to and see no reason to depart from it. I had observed thus:

"When the liberty of a person is involved a High Court can exercise its jurisdiction under Article 199 of the Constitution and grant him relief even though he has misconceived his remedy and came up with an application under sections 498 and 561-A of the Code of Criminal Procedure."

Therefore, while entertaining instant petition SHO P.S. Mangora as well as DPO District Sawat are restrained from arresting both the petitioners till they approach the competent Court of law for redressal of their grievances on or before 31.01.2019 and even they would not be arrested till the registration of FIR as the same has not been lodged till date as contended by the petitioners' side.

6. In the meanwhile, Petitioners are admitted to protective/anticipatory bail till 31.01.2019, to approach the Court of competent jurisdiction at Sawat, subject to furnishing surety of Rs. 5,000/- each (Rupees Five Thousand only) in cash to the satisfaction of Deputy Registrar (Judicial) of this Court. This order will cease to have effect after 31.01.2019. Petitioners would be at liberty to withdraw the surety amount after production of certified copy of the order of competent Court. Copy of this order be sent to the concerned SHO as well as competent Court.

7. Petition stands disposed of with all CMs.

(MOHSIN AKHTAR KAYANI)
JUDGE

Mudasar