

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
(JUDICIAL DEPARTMENT)

**Criminal Miscellaneous No.889-B of 2020**

Rashid Ali  
Vs.  
The State and another

S.No. of order/ proceeding	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	18.08.2020	Malik Altaf Hussain, Advocate for the petitioner. Mr. Shafqat Abbas Tarrar, Advocate for the respondent No.2. M/s Zohaib Hassan Gondal, and Hammad Saeed Dar, State counsel along with Zafar Iqbal, ASI, Police Station Koral, Islamabad.

The petitioner Rashid Ali son of Qurban Ali Kausar has sought post-arrest bail in case F.I.R No.426, dated 13.09.2019 registered under Section 408 of Pakistan Penal Code, 1860 (hereinafter referred to as “PPC”) at Police Station Koral, Islamabad.

2. Brief facts as narrated by the complainant in the FIR are that he is owner of Zong Franchise situated at Khanna-pull, Islamabad, he hired services of the petitioner as Franchise Finance Manager; that during Moharram holidays, the Company issued security of Rs.6.2 million, which was loaded on the cell phone of the petitioner; that the petitioner had further issued the load to the retailers but the petitioner with malafide intention telephonically called the RSO and Card Whole Sellers and received and misappropriated total amount of Rs.6.4 million, therefore, he has committed an offence of criminal breach of trust, hence, the instant case.

3. The learned counsel for the petitioner has *inter-alia*, contended that the latter has

been involved in the instant case with malafide intention of the complainant in connivance with the police; that no name of Retailer Sale Officer is mentioned in the FIR; that one Hammad Hussain and Sohail Shaarf have sworn affidavits wherein they have stated that Abbas Ali is the owner of Mubarak Traders (Zong Franchise) whereas Rashid Ali is working as Investor on partnership basis; they have further stated that Rashid Ali had not been working as Finance Manager in the Zong Franchise rather he was an investor and that he had not been working as Finance Manager with the complainant Abbas Ali. Further stated that the FIR has been lodged with an inordinate and unexplained delay of two days that there is no evidence against the petitioner to establish that the complainant has employed him as his Manager; offence is not attracted against the petitioner; that during the investigation nothing has been recovered from the petitioner; that the recovery has allegedly been affected from Naheem-ur-Rehman; that the petitioner has not committed any criminal breach of trust; that the petitioner is the partner of the complainant; that the complainant has made meager amount to the petitioner and did not fulfill his part of obligation; that the petitioner is behind the bar since 14.05.2020; that the petitioner is previously non-convict and non-record holder; that there is no direct or indirect evidence against the petitioner for the commission of the alleged offence; that the offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; that the investigation has been completed and petitioner is no more required for further investigation; that the ingredients of

section 408 of PPC are not attracted in the instant case; that there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; that the case against the petitioner is that of further probe.

4. On the other hand, the learned counsel for the complainant stated that the petitioner has failed to point out any malafide on the part of complainant or ulterior motives to falsely involve him in the instant case; that no document has been produced by the petitioner to prove himself as partner with the complainant; that laptop, tablet, report of RSO have been taken into possession from the petitioner; that the petitioner is nominated in the F.I.R with specific role; that Rs.62,00,000/- have been embezzled; that sufficient incriminating evidence is available on record to connect the petitioner with the commission of the offence; recovery has been effected from the petitioner; hence prayed for dismissal of the instant bail petition. Learned State Counsel submitted that an amount of Rs.400,000/- has been recovered from the petitioner and opposed the grant of bail to the petitioner.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Tentative assessment of the record shows that the FIR in the instant case had been lodged with an unexplained delay of two days. The stance of the prosecution is that on the disclosure of the petitioner, laptop, tablet, report of RSO have been taken into possession from the petitioner through recovery memo dated 20.05.2020, but there is no disclosure memo available on the record. Four Retailer Sales

Officer have stated that the petitioner has not been working as Finance Manager with the complainant rather he was an investor and partner with the complainant. Record further shows that no recovery has been effected from the petitioner rather an amount of Rs.4,00,000/- has been recovered from one Naeem-ur-Rehman. Case against the petitioner calls for further inquiry into his guilt within the purview of Section 497(2) Cr.P.C.

7. Furthermore, Hammad Hussain, Khanzeb, Muhammad Rehan Abbasi and Sohail Shaarf, who are Retailer Sales Officer, have sworn their respective affidavits stating therein that the petitioner Rashid Ali had not been working as Finance Manager in the Zong Franchise rather he had been an investor with the complainant. Issuance of security of Rs.6.2 million, which was allegedly loaded on the cell phone of the petitioner by the complainant appears to be a transaction of civil nature and whether it constitutes a criminal offence or not, is yet to be determined by the learned Trial Court after recording the evidence of the parties. Therefore, it would not be appropriate for this Court to make any further observation, which may prejudice the proceedings before the learned Trial Court. The investigation has been completed and the petitioner is no more required to the police. Challan has already been submitted before the learned trial Court. Guilt or otherwise of the petitioner is yet to be determined by the learned trial Court after recording evidence. The petitioner is behind the bar since 14.05.2020. His continued custody would not likely to serve any beneficial purpose at this stage. The offence under Section 408

PPC does not fall within the prohibitory clause, grant of bail in such like cases is a rule and refusal an exception. No extraordinary circumstances are available on record for refusing bail to the petitioner. Reliance in this regard is placed upon the case reported as **Muhammad Ramzan alias Jani Vs The State & others.** [2020 SCMR 717].

8. The Hon'ble Supreme court of Pakistan, in case reported as "**Manzoor and 4-others Vs. The State**" (PLD 1972 Supreme Court 81), observed as follows:-

*"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."*

9. In the circumstances mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.3,00,000/- (Three lacs) with one surety in the like amount to the satisfaction of learned Trial Court.

10. Needless to mention that this is a tentative assessment, which shall not effect the trial of this case in any manner.

(GHULAM AZAM QAMBRANI)  
JUDGE

S.Akhtar