

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 208-B of 2020.

Syed Yousaf Raza.
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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31.03.2020. Mr Jan Muhammad Khan, Advocate for the petitioner.
Mr Sajid, Inspector/I.O. FIA with record.

The petitioner Syed Yousaf Raza son of Syed Jamal has sought post arrest bail in case, F.I.R. No. 01, dated 21.01.2020, registered under section 5(2) of the Prevention of Corruption Act, 1947, sections 419, 420, 468, 471, 409 and 109 of Pakistan Penal Code, 1860 (hereinafter referred to as "**FIR**") at Police Station FIA Anti-Corruption Circle, Islamabad.

2. Brief facts as alleged in the FIR are that the petitioner in connivance with other co-accused/accomplice impersonated themselves as officers of Federal Investigation Agency and fraudulently collected Rs.2.6 million from the complainant. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; the latter is innocent; the petitioner has been falsely involved in the instant case with ulterior motives; the petitioner has been incarcerated for more than two months; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; his

continued incarceration will not serve any useful purpose; there is no chance of conclusion of the trial in near future; offences are not attracted against the petitioner; the petitioner has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; allegations against the petitioner are false, fake and concocted; the petitioner has no nexus with the commission of offences; no recovery has been affected from the petitioner; there is unexplained delay of more than six months in registration of the instant case; co-accused namely, Sheikh Mehmood Ahmed has been enlarged on bail; the instant FIR was registered without holding any preliminary inquiry, which is a mandatory requirement under sections 3 & 5 the Ordinance of 2002 read with the FIR (Investigations and Inquiries Rule, 1975); there is no incriminating material available on record; there is no direct or indirect evidence against the petitioner; offences do not fall within the prohibitory clause of section 497(1) Cr.P.C; the case against the petitioner is of further inquiry; hence the learned counsel urges the petitioner to be released on bail.

4. On the other hand Sajid Inspector/I.O. Federal Investigation Agency appeared and produced record; it is contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; the petitioner and other co-accused/accomplice personated themselves as officers of the Federal Investigation Agency and caused huge loss to the complainant for providing job in the Agency; the conduct of the accused brings his case within the exception to the general rule in case of offences falling within the non-prohibitory clause of section 497 Cr.P.C.; recovery

has been affected from the petitioner and, therefore, has urged for dismissal of bail.

5. The learned counsel for the petitioner has been heard and record pursued.

6. Admittedly, the FIR was registered after considerable delay of more than six months. The co-accused of the petitioner namely, Sheikh Mehmood Ahmed has been enlarged on bail. The latter was an official of the Department and he was responsible for giving access to other co-accused in the official building. The petitioner on his own could not have entered and used the official premises. The petitioner, therefore, has been alleged a lesser role than the co-accused. On the touchstone of principles of consistency it would be unjust to refuse bail. Report under section 173 of Cr.P.C. has not been submitted before the learned trial Court as yet. The petitioner has been incarcerated for more than two months. His continued incarceration will not serve any useful purpose. Deeper appreciation of evidence at this stage is not permissible. Moreover, there is nothing on record to show that the alleged recovery has been affected from the present petitioner. Investigation qua the petitioner has been completed. The questions, whether ingredients of section 5(2) ibid are fulfilled, whether the petitioner and other co-accused/accomplice had impersonated themselves as officers of the Federal Investigation Agency and his role and involvement, requires further probe. The petitioner does not have a criminal record. Nothing has been placed on record to indicate that the petitioner may abscond if he is released on bail. This Court is,

therefore, of the opinion that the petitioner is entitled to be released on bail.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"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".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is allowed and the petitioners are admitted to bail, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

Asad K/*