

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2690 of 2019

Mujahid Pervez

Versus

Federation of Pakistan through Secretary, Ministry of Interior and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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15.04.2020

Mr. Qaiser Imam, Advocate for the applicant/petitioner.

Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

Mr. Shoukat Ali Khan, Section Officer (F.I.A.), Ministry of Interior.

Mr. Taha Bhatti, S.I., F.I.A./A.H.T.C.

C.M. No.1043/2020.

Through the instant application, the applicant, Mujahid Pervez, seeks the grant of bail. Presently, the applicant is in judicial custody.

2. Learned counsel for the applicant submitted that the applicant has been in judicial lock-up since the past four and a half years; that although the writ petition filed by the applicant against the report of the Enquiry Magistrate was dismissed and so was the applicant's intra Court appeal, the Federal Government has unduly delayed his extradition; that the applicant has been incarcerated for a period longer than he can serve in jail if convicted in the United States of America ("U.S.A."); that no approval from the Cabinet has been obtained for the applicant's extradition; that it appears that U.S.A. Authorities are not interested in the applicant's extradition; that the applicant is almost 71 years of age and is a cardiac patient; that the applicant is in a low-immunity bracket and more likely to contract the COVID-19 virus; that the applicant shall not abscond, and as and when his presence is required, he shall appear before the Federal

Investigation Agency (“F.I.A.”); and that this Court may order the applicant’s release on bail on such conditions that it may be deemed appropriate.

3. On the other hand, the learned Assistant Attorney-General along with Mr. Shoukat Ali Khan, Section Officer (F.I.A.), Ministry of Interior and Mr. Taha Bhatti, Sub-Inspector, F.I.A. submitted that on 24.02.2020, warrants for the custody and removal of the applicant were issued by the Ministry of Interior; that pursuant to the said warrants, the applicant’s custody had to be delivered to the representative of the Government of U.S.A. at Islamabad for his extradition to U.S.A. for facing trial; that all the necessary formalities for the applicant’s extradition were completed, but on 03.04.2020, an e-mail was received by the F.I.A. from the Embassy of U.S.A. at Islamabad, wherein it was stated that due to COVID-19 concerns, there will be a delay in the ability of U.S.A. Authorities to take the applicant into custody and transfer him to U.S.A.; that the applicant should be kept incarcerated until the COVID-19 pandemic is in remission and circumstances become congener for his extradition to U.S.A.; and that the applicant is likely to abscond if released on bail. Learned Assistant Attorney-General prayed for the bail application to be dismissed.

4. I have heard the contentions of the learned counsel for the applicant as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

5. The applicant was arrested on 14.10.2015 after his arrest warrants were issued on 29.04.2015 by the Additional Deputy Commissioner, Islamabad who had been appointed as the Enquiry Magistrate vide order

dated 17.04.2015 issued by the Ministry of Interior (Government of Pakistan) in exercise of the powers conferred under Section 7 of the Extradition Act, 1972. The U.S.A. had made a request for the applicant's extradition from Pakistan. The applicant was alleged to have been involved in offences related to corruption in U.S.A. He was wanted to stand trial in the Supreme Court of the State of New York, County of Bronx.

6. The Enquiry Magistrate, after enquiring into the matter, submitted his enquiry report to the Federal Government on 20.07.2017. The Enquiry Magistrate concluded that a *prima facie* case had been made out against the applicant in accordance with the requirements of the Extradition Act, 1972. In the enquiry report, it was also observed that the applicant's extradition was the prerogative of the Federal Government, and that he be kept in prison till the Federal Government passes final orders.

7. The said enquiry report was assailed by the applicant in writ petition No.3662/2017 before this Court. The said writ petition was dismissed vide judgment dated 23.04.2018 passed by the learned Judge-in-Chambers. The said judgment was assailed by the applicant in intra Court appeal No.242/2018, which was dismissed by the Division Bench of this Court vide judgment dated 09.04.2019. The said judgment was not assailed any further.

8. It may also be mentioned that the applicant's application for post-arrest bail was dismissed by the Enquiry Magistrate vide order dated 29.10.2015. Another post-arrest bail application filed by the applicant on medical grounds was also dismissed vide order dated

14.12.2015. The applicant's post-arrest bail petition filed before this Court was dismissed, vide order dated 10.11.2016.

9. Due to the injunctive orders passed by this Court, the applicant could not be extradited to U.S.A. However, after the dismissal of intra Court appeal No.242/2018, there was nothing preventing the Federal Government to extradite the applicant. The matter regarding the applicant's extradition had been placed before the Federal Cabinet but no decision was taken because the agenda item had been dropped.

10. Vide letter dated 24.02.2020, the Ministry of Interior requested the Director General, F.I.A. to take the applicant's custody from Adiyala Jail, Rawalpindi and hand him over to U.S.A. Authorities. The warrant for the applicant's custody and removal under the provision of the Extradition Act, 1972 was also sent.

11. The learned Assistant Attorney-General brought on record e-mail dated 03.04.2020 from the Embassy of U.S.A. at Islamabad to the F.I.A., according to which, there would be a delay in the ability of U.S.A. to take him into custody and transfer him to U.S.A. due to COVID-19 concerns. For the purposes of clarity, the operative part of the said e-mail is reproduced herein below:-

"Naveed Muhammad shared your email with me. Our office wanted to reach out to FIA regarding Mujahid Pervaiz. We would still like him to be extradited to the United States. However, due to COVID-19 concerns, there will be a delay in our ability to take him into custody and transfer him to the United States. We just wanted to relay that message to FIA."

12. As per the applicant's C.N.I.C. No.42201-7424471-1, he is 70 years old. The documents appended with the petition shows that he suffers from cardiac ailment. He has been incarcerated for almost four and a half years. *Prima facie*, the

intent behind Section 12 of the Extradition Act, 1972 is that a fugitive offender should be discharged if he is not conveyed out of Pakistan two months' after he has been taken into custody to await his surrender. There is no denying the fact that persons of advanced age, such as the applicant, are more susceptible to contract COVID-19 due to their low immunity.

13. In view of the above factors and in particular the position taken by the Embassy of U.S.A. at Islamabad in its e-mail dated 03.04.2020 that there would be a delay in the ability to take the applicant into custody and transfer him to U.S.A., the instant application for post-arrest bail is allowed subject to the furnishing of bail bonds to the tune of Rs.10,00,000/- with two sureties to the satisfaction of Deputy Registrar (Judicial) of this Court. The applicant shall appear before the Deputy Registrar (Judicial) of this Court on a fortnightly basis and shall not leave Islamabad Capital Territory without the permission of this Court. The applicant shall tender appearance before this Court on every date of hearing of writ petition No.2690/2019. In the event, the applicant violates any of these conditions, the Ministry of Interior and/or the F.I.A. may apply for the recall of this bail granting order.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

Ahtesham*

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