

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No.

IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. Gr Misc 564-B-2015.

Titled. Asif Nawaz Khan Vs The State.

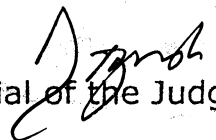
a) Judgment approved for reporting

Yes/No

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

  
Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first  
Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the  
judgment is to be approved for reporting of any comment is  
to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.



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

Crl. Misc. No.564-B-2015

Asif Nawaz Khokhar

Vs.

The State

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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23.09.2015

Ch. Abdul Aziz, Advocate for the petitioner.

Mr. Ahmad Hassan Rana, State Counsel with Ghulam Muhammad Shah, SI with record.

The following are the reasons of my short order of even date.

2. Through the present petition, the petitioner seeks post arrest bail in connection with FIR No.354 dated 05.09.2015 U/Ss. 13/20/65 A.O. & 420/468/471/188 PPC registered at Police Station, Koral, Islamabad.

3. It is alleged in the above FIR by Syed Sajjad Haider Bukhari, Inspector that during search operation, local police raided the shop of Khokhar Arms Dealer, where variety of illegal weapons was found, which was taken into possession. It is further alleged that petitioner is using his father's license for the sale and purchase of arms.

4. The petitioner, along with four others, filed petition for post arrest bail, which was dismissed by the learned Additional Sessions Judge-III Islamabad (East) to the extent of petitioner, vide order dated 12.09.2015, hence this bail petition.

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5. Learned counsel for the petitioner has argued that the petitioner is innocent and has falsely been involved in the present case with malafide intention; that after registration of FIR, thorough investigation was conducted by local police and it revealed that as a matter of fact, petitioner is the real son of licensee Muhammad Nawaz Khokhar, who died in the year 2006 and the petitioner has applied for transfer of license in his name; that as the petitioner had no other alternate to generate livelihood after the demise of his father, started to begin his business for sale and purchase of arms; that pendency of transfer of license does not constitute offence of forgery, cheating or dishonesty hence malafide of the police becomes evident; that petitioner has no concern whatsoever with the commission of alleged offence; that allegations levelled in the FIR do not constitute offence, as necessary ingredients in this respect are missing; that petitioner is entitled for grant of bail on the rule of consistency, as his case is at par with co-accused namely Shahbaz Nawaz, Muhammad Nazeer, Faisal Mehmood and Muhammad Rafique, who have been released on bail by the learned Additional Sessions Judge; that case of present petitioner falls within ambit of Section 497(2) Cr.P.C.; that prior to registration of above FIR, no conviction of the petitioner is on record. In view of above arguments, learned counsel for the petitioner has requested for grant of bail to the present petitioner.



6. On the other hand, learned State Counsel has opposed this bail petition and supported the orders passed by learned lower courts with the plea that the petitioner knowingly that dealership license is not in his name, possessed a large cache of arms and ammunition, which is not warranted in the prevailing law and order situation of the country.

7. I have heard the arguments carefully and perused the record as well as authorities referred.

8. The father of the petitioner was a license holder for sale and purchase of arms. The petitioner himself moved an application to the Deputy Commissioner, Islamabad for transfer of dealership in his name which is still pending since 2014. The details of weapons recovered are matching with the record seized by the police.

9. It is observed that Sections 420 & 188 PPC applied in above FIR are bail-able, whereas Sections 468 & 471 PPC are non-cognizable. As far as the status of offence falling u/s 13 of the Arms Ordinance is concerned there are controversial decisions rendered by various High Courts. Even, before the Hon'ble Sindh High Court, there is a controversial view with regard to its status as being bail-able or non-bail-able, whereas before other High Courts, its status remained controversial which led other High Courts to deliver contrary views. Therefore, instead of relying upon referred case law, it would be appropriate to refer

*Dr*

Second Schedule of Criminal Procedure Code, wherein offences against other laws, status of offences under Arms Ordinance, 1965 has been clearly mentioned. Against the relevant columns, it is provided that if **punishable within imprisonment of three years and upwards but not exceeding 7-years or with whipping not exceeding 80-strips with or without imprisonment.** Other offences have been defined as non bail-able, whereas offences under Arms Ordinance have been declared to be bail-able. The endorsement whereof available in the Second Schedule is reproduced here-under: -

***"Except in cases under [The Arms Ordinance, 1965 section 13] which shall be bail-able".***

The reference in Column No.4 further leads to the clarification with regard to history of Arms Law. In explanation existing at Sr. No.6 at the bottom of leaf, it is mentioned that **'For the words 'the Arms Act', 1878, section 19' the words 'section 13 of the W.P. Arms Ordinance, 1965 were substituted by Code of Criminal Procedure (Amdt.) Ordinance (IX of 1971), S. 3 (iii)'.**

It is observed that Section 19 existed in original Arms Act of 1878, but later on, it was substituted with Section 13 on promulgation of West Pakistan Arms Ordinance, 1965.

10. In view of such legal analogy, entire section 13 of Arms Ordinance is deemed to be bail-able therefore bail plea of the petitioner, on this alone score, cannot be

*D* declined.

11. Another very important material point raised during arguments is with regard to inclusion of some enactments in addition to Section 13 of Arms Ordinance. All those additions were made through Ordinance which on complete of its age, stood abolished.

12. Under the circumstances, in view of such amendment, the nature and status of offence could have been changed from bail-able to non bail-able as well as its punishment enhanced by virtue of said Ordinance.

13. There was an essentiality contained in those amendments regarding inclusion of those sections by showing those in the Schedule of Separation of Terrorist Activities Act, 1975. Neither the said Act is in operation on promulgation of ATA nor the said amendment, hence Section 13 of Arms Ordinance, 1965, in its original form, is a bail-able offence.

14. Another very important feature is that initial punishment provided in whole Section 13 of the Arms Ordinance is three years. On its amendment by Ordinance XXI of 1971, such punishment was enhanced from three years to seven years, but yet, the position with regard to its status as bail-able or non bail-able remains same. The intent of legislation not modifying the said endorsement, as referred above, seems to be as bail-able offence.

15. For what has been discussed above, instant bail petition is allowed. Consequently, the petitioner is ordered to be enlarged on bail, subject to furnishing bail



bonds in the sum of Rs.10,00,000/- (Rupees Ten Lacs) with one surety in the like amount to the satisfaction of learned trial court.

16. Since the above observations are tentative in nature therefore learned trial court needs not to be influenced by the same.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Approved for Reporting

JUDGE

  
Zulqarnain Shah

Blue Slip added.

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