

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No.821-B of 2018
Shahid Aslam
Versus.
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.12.2018	Mr. Usman Ali, Advocate for the petitioner. Mr. Sohail Warraich, Advocate/proxy counsel for the complainant/respondent No.2. Malik Awais Haider, learned State Counsel. Mr. Hasam Bin Iqbal, S.P. Mr. Tahir, Inspector/I.O. Mr. Alamgir, S.I/I.O.

Through the instant criminal miscellaneous petition, the petitioner, Shahid Aslam, seeks post-arrest bail in case F.I.R. No.181, dated 07.08.2018, registered under Sections 420/468/471 and 448 of the Pakistan Penal Code, 1860 (“P.P.C.”), at Police Station Noon, Islamabad.

2. Vide orders dated 06.09.2018 and 17.09.2018, the petitioner’s post-arrest bail petitions, were dismissed by the learned Judicial Magistrate, Islamabad (West) and the learned Sessions Judge, Islamabad (West), respectively.

3. Learned counsel for the petitioner submitted that the petitioner had been falsely implicated in the F.I.R.; that the petitioner has been incarcerated ever since 29.08.2018; that the said F.I.R. has been registered with a delay of two and a half years; that the said F.I.R. was registered due to the collusion between one Muhammad Zameer son of Mehboob Elahi (the complainant) and the local police; that during the course of the investigation, no incriminating evidence

against the petitioner has been found; that the case against the petitioner is one of further inquiry; that the dispute between the petitioner and the complainant is purely of a civil nature; that the petitioner had not been involved in the sale of a property belonging to another person; and that the offences which the petitioner is alleged to have committed, do not fall within the prohibitory clause of Section 497 Cr.P.C. Learned counsel for the petitioner prayed for the post-arrest bail petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for the complainant/respondent No.2 submitted that the learned Sessions Judge, while dismissing the petitioner's post-arrest bail petition, observed that the provisions of Section 467 P.P.C. were also attracted in the case against the petitioner; that the offence under Section 467 P.P.C. does not fall within the prohibitory clause of Section 497 Cr.P.C.; that despite the said observation of the learned Sessions Judge, Section 467 P.P.C. has not been added to the offences which the petitioner is alleged to have committed; that the petitioner in connivance with the Sub-Registrar has been able to sell the complainant's land to a third party through a registered sale deed; that the police as well as the Chief Commissioner's office are actively protecting the Sub-Registrar who was responsible for the registration of a false sale deed; that no effort was made to determine whether the petitioner had the authority to sell the land which was the subject matter of the said registered sale

deed; that the petitioner had remained a tenant in the property which he is alleged to have unlawfully sold; that the said registered sale deed contains false recitals and was executed without lawful authority; and that till date, the said registered sale deed has not been cancelled. Learned counsel for the complainant prayed for the instant petition to be dismissed.

5. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. As per the contents of the said F.I.R., the allegations levelled against the petitioner are that he, as a special attorney, sold the complainant's house and land to Ijaz Khan son of Shah Nawaz Khan through sale deed No.4606, dated 03.06.2016 registered by the Sub-Registrar, Islamabad; that the execution of the said sale deed and its registration are based on fraud and *malafides*; that the said sale deed was registered without verification of the title and possession of the seller of the said house and land. The complainant had applied for a case to be registered under Sections 420, 448, 468 and 471 P.P.C. against the petitioner, Ijaz Khan and the witnesses, namely, Faisal Zameer and Waseem Iqbal.

7. This petition was taken-up for hearing by this Court on 15.11.2018. Since the Investigation Officer had not even questioned the Sub-Registrar who had registered the said sale deed dated 03.06.2016, this Court expressed its reservations regarding the investigation in the following terms:-

“Being dissatisfied with the explanation by the Investigation Officer as to the role of the Sub-Registrar in registering the sale deed with respect to the property, which was not owned by the seller, I feel that the presence of the SSP (Operation) is essential in this matter.”

8. On the next date of hearing (i.e., 27.11.2018), the S.P. (Investigation) tendered appearance before this Court. The joint stance of the police as well as the learned counsel for the Chief Commissioner’s office was that there had been no wrong doing on the part of the said Sub-Registrar of the Islamabad in registering a sale deed at the instance of a person who had no right to sell the land in question. This faulty stance taken during the investigation caused this Court to direct the Inspector General of Police, Islamabad, and the Chief Commissioner, Islamabad Capital Territory (“I.C.T.”) to tender appearance before this Court. Furthermore, the matter was referred to the Hon'ble Chief Justice for the constitution of a larger bench for the hearing of this matter. For the purposes of clarity, the order dated 27.11.2018, passed by this Court is reproduced herein below:-

“The collaborative stance of I.C.T. as well as the Police is that there is absolutely no wrong doing on the part of Sub-Registrar in registering the sale deed at the instance of a person, who had absolutely no title or right to sell the land in question. Finding the said explanation totally unsatisfactory, I feel that the presence of the Inspector General of Police, I.C.T. as well as the Chief Commissioner, I.C.T. is essential in this matter.

Office is directed to issue notices to the Inspector General of Police as well as to Chief Commissioner, I.C.T. to tender appearance before this Court on the next date of hearing i.e. 05.12.2018.

Given the gravity of the matter, this case ought to be heard by a Larger Bench of this Court. Office is directed to place the file before the Hon'ble Chief Justice for constitution of a Larger Bench."

9. On 05.12.2018, the Inspector General of Police, Islamabad, and the Chief Commissioner, I.C.T. tendered appearance before the Court and submitted that a team of senior officers had been constituted to investigate the matter.

10. This petition was heard at length on 13.12.2018. We were informed that the Sub-Registrar who had registered the sale deed dated 03.06.2016 had obtained bail before arrest. We were also informed that the investigation in the case is still ongoing.

11. No explanation was given as to why the police had decided only to arrest the petitioner (who was the attorney through which the land in question was sold), and not Ijaz Khan (to whom the said land had been sold) or the petitioner's principal (who is stated to be the owner/seller of the land in question). The police did not even consider it necessary to question the Sub-Registrar who had registered the said sale deed, until this lapse in the investigation was pointed out by this Court.

12. The learned Sessions Judge while dismissing the petitioner's bail petition had observed that the offences which the petitioner was alleged to have committed did not fall within the prohibitory clause of Section 497 Cr.P.C. The petitioner has remained behind bars since the past three and a half months. The petitioner is presently in the judicial lock-up. Since the investigation

in the matter is ongoing and the police is yet to question the Sub-Registrar who had registered the said sale deed as well as the seller who had given the petitioner a power of attorney to sell the land in question, the petitioner cannot be kept incarcerated indefinitely.

13. It has become common-place for sale deeds to be registered by Sub-Registrars without bothering to verify as to whether the seller is indeed the owner of the property which is being sold. Without the involvement of the Sub-Registrar's office, such nefarious sellers cannot succeed in their design of depriving the lawful owners of their property. This menace is to be dealt with strictly by the State.

14. It is expected that the Inspector General of Police, Islamabad, the Chief Commissioner, I.C.T. would honour their word that this matter would be thoroughly investigated and the culprits would be held accountable.

15. In view of the above, the instant petition is allowed subject to the furnishing of the bail bonds in the sum of Rs.10,00,000/- with two sureties in the like amount to the satisfaction of the learned Trial Court. Office is directed to forward a copy of this order to the Inspector General of Police, Islamabad as well as the Chief Commissioner, I.C.T.

(CHIEF JUSTICE)

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING