

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Cal Mue 172-B-2012

Titled Christopher Ofraa Alias Mark William
Vs
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 the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

[Signature]
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.

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Miscellaneous No.172-B/2012

Christopher Ofroa Alias Mark William 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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17.4.2012.	Raja Rizwan Abbasi, Advocate for petitioner. Mr.Tariq Bilal, Legal Advisor NR3C/FIA. Muhammad Raza, S.I NR3C/FIA Mukhtar Ahmed Baloch complainant.
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The petitioner on declining relief by the learned Additional Sessions Judge, Islamabad has submitted the instant criminal miscellaneous seeking bail in FIR bearing crime No.2/2012, under section 36,37 Electronic Transaction Ordinance 2002 read with section 419,429,468, 471,109 PPC and section 14 of Foreigners Act, by F.I.A Cyber Crime Circle, Rawalpindi.

2. The facts narrated in the FIR lodged by complainant Mukhtar Ahmed Baloch on 22.2.2012, disclosing therein the alleged incident occurred in the month of September 2011. Complainant inter-alia alleged that in the month of September 2011, he received a message on his Face book from Adward Jackson that one Engineer Paleejo Ishaq has been died in an accident and amount of US\$7600 million was lying at Togoliese De Bank West Africa. Also it is



alleged that complainant was asked to contact one Barrister Sunny Muhammad, personal lawyer of Engineer Paleejo Ishaq Baloch. On the said pretext amount was received from the complainant at different occasions. The petitioner was arrested on 22.2.2012 i.e date of lodgment of FIR.

3. An application for bail was moved before the Additional Sessions Judge, Islamabad which was dismissed vide order dated 22.3.2012. Therefore, instant petition is filed.

4. Learned counsel for the petitioner argued that the entire case is based upon E.mail for which there is no proof as to whether same communicated by the petitioner, therefore, section 36 and 37 of Electronic Transaction Ordinance 2002 are not made out. Section 36 defines any person gains or attempts to gain access to any information system or to gain knowledge of such information when he is not authorized to gain access, shall be guilty of an offence punishable up to seven years.

5. Section 37 of Electronic Transaction Ordinance 2002 defines any person does or attempts to do any act with intent to alter, modify, delete, remove, generate, transmit or store any information through or in any

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information system knowingly that he is not authorized to do, shall be guilty of offence under this ordinance.

6. Another part of section 37 provides an act attempted with intent to impair the operation of, or prevent or hinder access to any information contained in any information system, knowingly that he is not authorized to do, shall be guilty of offence, which is punishable up to seven years.

7. He argued that therefore, sending E.mail does not constitute any of offence specified above. He argued that FIR lodged on 22.2.2012 when incident shown to have occurred in the month of September without disclosing date and time. Since, no recovery of any device is effected, therefore, it can not be thrust upon the petitioner being active agent of sending such E.mail. He referred Article 78 of Qanoon-e-Shahadat Ordinance, 1984 which is as under:

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"If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the documents as is alleged to be in that person's handwriting must be proved to be in his handwriting."

8. By referring so, he contended that burden lies upon the prosecution to prove the allegations of like nature as alleged above when petitioner denied it which is the case of prosecution deemed to be denial as such, petitioner is facing agony of trial, languishing in jail. To determine the preposition of law referred above, the relevant section 78-A of the Qanun-e-Shahadat, Order, 1984 is reproduced here in below:

"Proof of electronic signature and electronic document.---- If an electronic document is alleged to be signed or to have been generated wholly or in part by any person through the use of an information system, and where such allegation is denied, the application of a security procedure to the signature or the electronic document must be proved."

9. He argued that section 471 PPC does not attract as the document referred by the complainant is not containing signatures of any person, therefore, same not comes within the definition provided by section 471 PPC i.e. the production of forged document as genuine.

10. He argued that ingredients of section 463 PPC are missing entirely as there is no evidence collected to prove that the present petitioner is the author of that E.mail. Therefore, no question of application of section 468 PPC arises. He argued that the bank account is not in the name of present petitioner nor any proof

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collected that he instrumented to open that account as such again offence specifies in section 419 PPC can not be attributed to the petitioner.

11. He also argued that section 420 PPC is bailable offence though punishable for seven years. Finally, he argued that section 14 Foreigners Act is also misapplied. He argued that section 14 of Foreigners Act has been devoid into two parts, both are not attracting as the petitioner having a valid visa at the relevant time as referred at page 15 of the file.

12. In support of arguments, he relied upon case law reported in 2010 PCr.LJ 769 (Lahore), 1986 PCr.LJ 774 (Lahore) & PLD 2011 Supreme Court 554.

13. Mr.Tariq Bilal, legal advisor of FIA, argued that the complainant has been cheated by the petitioner who extracted Rs.2,600,000/- from him and not only the complainant but the other two persons have also been cheated by the same group of cheaters who on arrest of petitioner identified him in the court, when produced before the court for the purpose of obtaining remand. It is also argued that the complainant himself paid cash amount to the complainant. Computer recovered from Adnan Fahad companion of the present petitioner.



14. He also argued that another FIR of like nature bearing crime No.12/2011 has been lodged by one Wazeer Muhammad mentioning his another fake name which was subsequently on collecting evidence disclosed to be the present petitioner.

15. Also one Touseef Ahmed has been cheated by the same group who identified him in the court at the time of obtaining remand and they conjointly used to commit fraud, thereby cheating innocent people. He introduced himself to said Touseef as Owen Robert and he being a same person identified by him know with the name as Christopher Ofroa Alias Mark William, therefore, section 419 PPC was subsequently added in the prosecution case.

16. In the like manner, Wazeer Muhammad complainant paid him as Franklen Foody but person is same. Said Wazeer Muhammad too identified him as Franklen Foody who cheated him for which separate FIR was registered. He argued that co-accused Adnan Fahad has been refused bail by the court below. Also it is argued that earlier the present petitioner was involved in a case of human trafficking for which learned counsel for the petitioner pointed out that he has now been acquitted in that case. Learned

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Legal Advisor, FIA relied upon case law reported in 2002 SCMR 1009 (Supreme Court of Pakistan) and PLJ 2002 SC 1111 (Appellate Jurisdiction).

16. Arguments of both the counsel heard at length, order passed by trial court is also perused as well as the relevant case law, material available on record produced by the prosecution.

17. From the record, it appeared that the allegation leveled against the petitioner of perpetuating fraud with the complainant, thereby cheated him, therefore, section 420 PPC applied, however, section 468,471 PPC from the general complexion of prosecution case are not seem to be substantiated while assuming tentative assessment. So far the concern of section 419 PPC which in view of statement of complainant and PW Touseef Ahmed strongly made out. The said offence being repeated by the petitioner with one Wazeer Muhammad who lodged separate FIR bearing crime No.12/2011. Section 419 PPC though punishable up to three years or fine or both but same is non-bailable offence.

18. So far the concern of application of section 14 of Foreigners Act, I while going through the same, form an opinion that section

14 bifurcated into two parts. First part provides contravenes any provision of this Act or order made under it, or directions given in pursuance of Act shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

19. Part-2 provides illegal entry into Pakistan shall be an offence under this act, punishable for a term extended up to ten years and fine extended to Rs.10,000/-.

20. Like-wise section 14-A of the Foreigners Act 1946 provides bar on grant of bail with the condition that the accused of an offence punishable u/s 14(2) shall not be released on bail if there appear reasonable grounds to believe that he is guilty of such offence.

21. From the above interpretation of law coupled with examining the permission referred at page 15 which showing itself validity up to 06.12.2011 when present petitioner was arrested on 22.2.2012 till then the said document expired not existing in field.

22. The documents produced in support of contentions that entry of accused was under a valid permission and passport secured from his possession was done away by the FIA Authorities, therefore, the document referred

being a valid authority admitted to be a permission allowed to the accused by the government for entering into the territory of Pakistan.

23. From the perusal of record, it transpires that same being a photo copy can easily be changed by a mechanical process through photo copy machine.

24. In this regard, when inquires made about the original, same too could not be produced by the learned counsel for petitioner.

25. For the sake of arguments, if it is believed to be part of passport which infact done away by FIA authorities then question arises as to wherefrom this document has been copied. As such in view of articles 73 to 76 of Qanoon-e-Shahdat Ordinance 1984 same can not be believed as genuine document being secondary piece of evidence which otherwise required to be proved through primary evidence as envisaged by section 73 of Qanoon-e-Shahdat. For convenience Articles 73 to 75 are reproduced herein below:

73. **Primary evidence.** Primary evidence means the document itself produced for the inspection of the Court.

74. **Secondary evidence.** Secondary evidence means and includes:

1. certified copies given under the provisions hereinafter contained:

2. copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies:
3. copies made from or compared with the original:
4. counterparts of documents as against the parties who did not execute them:
5. oral accounts of the contents of a document given by some person who has himself seen it.

75. **Proof of documents by primary evidence.** Documents must be proved by primary evidence except in the cases hereinafter mentioned.

26. Taking in view such a very important legal aspect when the very document by itself is not proved to be genuine document, his entry in Pakistan, therefore, comes under the shadow of doubt. Hence, case of prosecution is fully attracted with in ambits of section 14 of Foreigners Act which is punishable for ten years as well as comes within boring clause for grant of bail provided by section 14-A of Foreigners Act.

27. Moreover, the petitioner has repeated the offence of similar nature as such his case comes within exceptions discussed in case reported in PLD 1995 Supreme Court 34 (*Tariq Bashir and five others vs. The State.*) whereby Hon'ble Supreme Court observed that the offence falling in second categorically punishable with imprisonment for less than ten years, the grant of bail is a rule and refusal is an exception, so bail will be declined only in the extra ordinary

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grant of bail is a rule and refusal is an exception, so bail will be declined only in the extra ordinary and exceptional cases. One of the exception discussed is "***whether there is danger of the offence being repeated if the accused is released on bail***", bail can be declined. In the instant case, likelihood is not in feature but the accused has already repeated the offence as apparent from the record also discussed above.

28. For both accounts referred above, in my humble view, the petitioner is not entitled for grant of bail, hence, request for grant of bail is hereby declined, consequently instant bail petition is dismissed.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in open Court on 24-04-2012.



Approved for reporting.

JUDGE

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