

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.649-B/2020

Amraiz Khan.
Versus
THE STATE, ETC.

Petitioner by: Mr. Ali Husain Bhatti, Advocate.
Complainant by: Ch. Riasat Ali Gondal, Advocate.
State by: Mr. Farrukh Shahzad Dall, AAG.
Mr. Naeem Khan Niazi, Inspector, FIA.
Date of Hearing: 13.05.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, the petitioner seeks bail after arrest in case FIR No.08/2018, dated 24.12.2018, registered for offences under section 420/468/471/409/109/201 PPC and 5(ii) 47 PCA, at Police Station FIA (FIA Corporate Crime Circle), Islamabad.

2. The facts of the case are that during the course of hearing of Civil Appeal No. 19/2014, before the Hon'ble Supreme Court a scam was unearthed regarding fraudulent allotment of Agro-Farm plot No. 36-B, measuring 2.29 acres in Orchard/Permanent Nursery Scheme, Muree Road, Islamabad by the legal heirs of late Ghulam Rasool and Walayat Jan whose agricultural land was acquired by CDA, vide award dated 04.01.1963. An eligibility certificate No. A000051 dated 12.10.1965 was issued to late Ghulam Rasool and thereafter land measuring 100 kanal 02 marlas in village Chak No. 178/9-L, Tehsil Chicha Watni, District Sahiwal was allotted against the said eligibility certificate, but the legal heirs of late Ghulam Rasool, by concealing this fact also got allotted plot No. 36-B in Agro-Farm under the Rehabilitation Policy, 1996, approved by the CDA for the affectees who were not yet allotted any plot against the eligibility certificate issued by CDA for compulsory acquisition of their lands. The Hon'ble Supreme Court ordered initiation of criminal proceedings against the persons accused in the FIR and also directed the FIA and Auditor General of Pakistan to submit inquiry and audit report before the Hon'ble Supreme Court of Pakistan. The FIA, thus lodged FIR bearing No. 08/2018 dated 24.12.2018 and initiated investigation in the matter by nominating (1) Khalid Mehmood (grandson of Ghulam Rasool); (2) Amraiz Khan (grandson of Walayat Jan); (3) Mehbood Ahmed (former Deputy District Officer, District Sahiwal); (4) Falak Sher (former Deputy District Officer Revenue, Tehsil

Chicha Watni, District Sahiwal); (5) Akhtar Hussain (former Tehsildar, Chicha Watni); (6) Manzoor Ahmed (former Qanoon-go, Daad Fatyana, Tehsil ChichaWatni); (7) Qamar Ali (former Clerk Record Room, DC, Sahiwal); (8) Khalid Farooq (former Patwari, Rehabilitation, CDA, land and rehabilitation Directorate, Islamabad); & (9) Ch. Muhammad Rafiq.

3. Present bail application has been moved by Amraiz Khan, grandson of affectee Walayat Jan, whose role as per the record is that he in collaboration with legal heirs of the affectee Ghulam Rasool, while committing forgery applied for allotment of Agro Farm in Islamabad, and also remained a contesting party in the litigation upto the Hon'ble Supreme Court of Pakistan.

3. The Petitioner/accused applied for bail after arrest before Special Judge Central CCC/FIA, Islamabad which was dismissed, vide order dated 16.04.2020.

4. Learned counsel for the petitioner/accused submitted that the date and hour of occurrence of offence mentioned in the FIR is for the period 2005 to 2010, however, the FIR has been registered on 24.12.2018 after a delay of about 8 years. Learned counsel further submitted that offences under section 420/471/201 & 109 PPC are bailable, whereas, offences under section 468 PPC & 5(ii)47 PCA do not fall under prohibitory clause of section 497 Cr.P.C. Learned counsel contended that no specific role of submitting any forged document has been attributed to the accused Amraiz Khan rather the only allegation against him is that he in collaboration with the legal heirs of Ghulam Rasool affectee, applied for allotment of Agro Farm; that accused petitioner was not allotted any land anywhere in pursuance of the award being the legal heir of affectee Walayat Jan. Learned counsel contended that provisions of section 409 PPC are not attracted in petitioner's case and relied on case titled as "Abdul Rashid Nasir vs. The State" (2009 SCMR 517) & "Muhammad Tahir vs. The State" (2010 YLR 2244). For delay in filing of FIR learned counsel relied on judgment titled "Shahzad Riaz vs. The State" (2019 P Cr.LJ Note 8). Learned counsel lastly contended that the entire record pertaining to the case is in the custody of FIA, therefore, there is no chance of tempering with the record; there is no chance of abscondance of the petitioner/accused and the case is of further inquiry and further placed reliance on the case law reported as "Sameen Jan (Naib Tehsildar) vs The State" (PLD 2011 Supreme Court 509), "Farkhand Iqbal vs. The State" (2014 P Cr. L J 1223), "Syed Mehmood Ali Shah vs. The State" (2018 YLR 1411) & "Saeed Ahmed vs. The State" (1996 SCMR 1132). Learned counsel also relied on the order of Hon'ble Supreme Court of Pakistan dated 07.04.2020 passed in Criminal Petition No. 299 of 2020,

whereby, the Hon'ble Supreme Court of Pakistan *under the present circumstances due to pandemic of Covid-19, relating to grant of bail to the accused persons charged for offences under non prohibitory clause or under vagrancy law or offences carrying less than three (03) years sentence has observed that their cases be considered for grant of bail, where the accused is suffering from ailments and to under UTPs who are 55 years or older provided they have no history of past conviction.* Learned counsel thus submitted that the accused petitioner under the circumstances is entitled for concession of bail.

5. Learned counsel for CDA submitted that the accused/petitioner along with other co-accused concealed the fraud and contested the litigation up to Hon'ble Supreme Court of Pakistan, where it was found out that entire process of allotment of Agro Farm was based on forgery, tempering misappropriation of the original record. Learned counsel submitted that involvement of the accused/petitioner in commission of fraud is also apparent from the sale agreement dated 10.11.2010 which he executed with Muhammad Rafique property dealer and received sum of Rs. 10 Million and the Power of Attorney dated 10.11.2010 which he executed in favor of said property dealer who is also an accused in the present case. Learned counsel submitted that there is enough incriminating material of fraud available on record against the accused/ petitioner, therefore, he is not entitled for grant of bail.

6. Learned AAG along with I.O of the case produced record of investigation and submitted that accused petitioner is actively involved in the forgery and fraud committed by the accused persons and sufficient material in this regard is available on record, therefore, instant bail petition is liable to be dismissed.

7. I have heard the arguments of learned Counsel for the parties as well as learned AAG and have also perused the record produced by the I.O.

8. Perusal of the record reveals that the accused petitioner in collaboration with the legal heirs of affectee Ghulam Rasool, through their property dealer, initiated process for allotment of agro farm under the rehabilitation policy 1996 announced by CDA for the affectees whose lands were compulsorily acquired by CDA in Islamabad but were neither compensated nor allotted land in exchange. Investigation conducted by FIA *prima facie* shows that the legal heirs of affectees Ghulam Rasool and Walayat Jan concealed the fact of earlier allotment of land against EC No. A000051 dated 12.10.1965 in Sahiwal and on the pretext of misplacing the original EC obtained orders of issuing NOCs by CDA for allotment of agro farms in Islamabad. ^{So} As far as argument of learned counsel for petitioner regarding innocence of accused/petitioner is concerned it

is observed that sale agreement, regarding the fraudulently allotted agro farm Plot No. 36-B, Orchard/Permanent Nursery Scheme, Murree Road, Islamabad measuring 2.20 Acres, executed by the accused / petitioner with Ch. Muhammad Rafique, property dealer and an irrevocable General Power of Attorney executed by the accused / petitioner in favor of the said property dealer, who is also nominated in the FIR as an accused are available on record which *prima-facie* hint towards involvement of the accused / petitioner in commission of offence. Moreover, it is also apparent from record that he remained party in entire litigation along with legal heirs of affectee Ghulam Rasool, co-accused. The investigation in the matter is still under process and the points raised by the learned counsel for the petitioner during his arguments require deeper appreciation of the facts and record of the case. Whereas, it is well settled principle that the bail applications are to be decided on the basis of tentative assessment to be made just to find out as to whether the Petitioner is *prima facie* connected with the commission of the alleged offence or not and the deeper appreciation of the evidence, circumstances and documents is not permissible. Reference in this regard can usefully be made to the case law reported as ***Khalid Javed Gillani v. The State (PLD 1978 SC 256)***, ***Aamir Bashir and another Vs. The State and others (2017 SCMR 2060)***.

10. For what has been discussed above, I find no merits in this bail application which is accordingly dismissed. However, it may be clarified that the observations made hereinabove are tentative in nature and shall not prejudice the proceedings before the learned trial Court.

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan/*