

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

CRIMINAL PETITION NO. 62-L OF 2023

(On appeal against the order dated 18.01.2023 passed
by the Lahore High Court, Lahore in CrI. Misc. No.
70185-B/2022)

Muhammad Aziz @ Mana

... Petitioner

Versus

The State etc

... Respondents

For the Petitioner:

Mr. Muhammad Akhtar Rana, ASC
Mr. Tasneem Amin, AOR a/w petitioner in
person
(Via video link from Lahore)

For the State:

Mirza Abid Majeed, DPG
Mr. Nasir Abbas, DSP
Mr. Amir Ahmed, SI

Date of Hearing:

23.08.2023

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 18.01.2023 passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 914 dated 09.09.2022 under Sections 381/411 PPC at Police Station Factory Area, District Faisalabad, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that 16 co-accused of the petitioner used to work in the factory of complainant wherein flags were used to be manufactured. The co-accused of the petitioner used to steal the prepared and printed flags and sell the same to the petitioner. The co-accused were caught red-handed by the complainant and other witnesses and it was found that a loss of about two and half crore has been caused to the complainant.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the allegations leveled against the petitioner are false, frivolous, baseless, concocted and the prosecution story is not worthy of credit. Contends that all the co-accused including the principal accused have been granted post-arrest bail by the court of competent jurisdiction, therefore, following the rule of consistency, the petitioner also deserves the same treatment to be meted out.

4. On the other hand, learned Law Officer opposed the petition by contending that the petitioner has specifically been nominated in the crime report with a specific role of causing huge loss to the complainant, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. As per the contents of the crime report, the co-accused of the petitioner used to work in the factory of complainant. Allegedly, they used to steal goods and sell the same to the petitioner. A bare perusal of the record depicts that the entire fraudulent transaction took place in a span of more than four years and no specific dates for commission of theft have been given. The FIR was lodged with an inordinate delay of 13 days for which the complainant did not utter a single word. The only allegation against the petitioner is that he used to purchase the stolen articles from the co-accused. Admittedly, he was not employee of the complainant, therefore, the question of applicability of Section 381 PPC would be resolved by the learned Trial Court. We have been informed that all the co-accused of the petitioner have been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali

and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The State through Prosecutor General of Punjab and another (2022 SCMR 1424). The maximum punishment provided under the statute for the offence under Section 411 PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. Keeping in view the peculiar facts and circumstances of the present case, the possibility cannot be ruled out that the petitioner has been involved in the case by throwing a wider net by the complainant. Mere allegation of causing huge loss is no ground to decline bail to an accused. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). Taking into consideration all the facts and circumstances stated above, we are of the view that the petitioner has made out a *prima facie* case for grant of pre-arrest bail.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order. The petitioner is admitted to pre-arrest bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

Islamabad, the
23rd of August, 2023
Approved For Reporting
Khurram