

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Misc.B.A.No.395-A/2017

JUDGMENT

Date of hearing.....20-07-2017.....

Petitioner (s)... (Abdul Khanan) by Mr. Muhammad Nauman Khan, Advocate.....

Respondent (s)..... (The State etc) by Ms Fizza Ahmad Niazmi, Advocate for the State. Nemo for complainant.

SYED MUHAMMAD ATTIQUE SHAH, J.-

Accused-petitioner, Abdul Khanan, seeks his post arrest bail in case FIR No.364 dated 17.04.2017 under sections 419/420 of Pakistan Penal Code, 1860 registered at Police Station City, Mansehra.

2. The case of the prosecution against the petitioner, registered on the report of complainant Aamir Iqbal, is that on 13.12.2016, accused/petitioner has sold motorcar No.ATM-411 Toyota XLI model 2010 for a sum of Rs.1,200,000 and complainant paid him cash amount of Rs.750,000/- and also handed over documents of the vehicle but he took away the vehicle fraudulently. Later on, the complainant got checked the documents of the vehicle and came to

know that the vehicle was registered in the name of Bank Alfalah. Thereafter, on 21.03.2017 a jirga was convened between the parties, wherein, it was decided that the accused/petitioner would return the amount of Rs.200,000/- till 01.04.2017 to the complainant, otherwise, the vehicle will be handed over to him for Rs.1,000,000/- and accused/petitioner would also liable to pay Rs.200,000/-, which he had received from the complainant.

3. Arguments of the learned counsel for the accused/petitioner and learned State counsel heard and record perused with their able assistance. In this case, respondent No.2 appeared before the A.R, however, when the case was fixed before the Court, he failed to appear on 11.07.2017. Thereafter, this Court has given another opportunity for his service and he was properly served on 15.07.2015 for today's hearing, however, despite service he is not in attendance.

4. Perusal of record reveals that the complainant has entered into a bargain of motorcar with the accused/petitioner and paid him Rs.750,000/- in cash, who handed over documents to the complainant. However, later on the complainant compromised the matter with the accused/petitioner.

Admittedly, the motorcar is registered in the name of Bank Alfalah, meaning thereby that the vehicle and documents are genuine. It was alleged by the complainant in his report that after receipt of Rs.750,000/- from him, the accused/petitioner fraudulently took away motorcar with him. The nature of alleged fraud committed by the accused/petitioner is such that it cannot be determined without recording of evidence by the trial Court. Moreover, the bargain took place between the parties on 13.12.2016, whereas the present F.I.R has been lodged against the accused/petitioner on 17.04.2017 after delay of about four months. Additionally, applicability of the section 419 PPC to the facts of the case would also be determined by the learned trial Court, even otherwise, the offences under section 419 *cheating by personation* and section 420 *Cheating and dishonestly inducing delivery of property* provide seven years punishment, which do not fall within the prohibitory clause. In view of the peculiar facts and circumstances, the case against the petitioner is *prima facie* that of further inquiry into his guilt.

5. **In Zafar Iqbal's case (2009 SCMR 1488)**, a larger Bench of the august Apex Court has explicitly expressed the principles for considering the

grant of bail, where offences do not fall within the prohibitory clause of section 497 Cr.P.C. The said principles have consistently been followed by the Honourable Supreme Court, as it has been held in **Riaz Jafar Natiq's case** (2011 SCMR 1708) that:

“Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into an appeal and the same is allowed and, resultantly, the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs. 1,00,000 (Rupees one hundred thousand only) with two sureties each in the like amount to the satisfaction of the learned trial Court.”

6. In any case, investigation in the present case is complete and the accused/petitioner is not required to the police for the purpose of further investigation. In peculiar facts and circumstances of the present case, no useful purpose is going to be served by keeping him behind the bars.

7. Consequently, this bail application is accepted and accused-petitioner, Abdul Khanan, is admitted to bail, subject to his furnishing bail bonds in

the sum of Rs.100,000/- (Rupees One Hundred Thousands) with two sureties, each in the like amount to the satisfaction of the *Illaqqa*/Duty Magistrate, Mansehra.

8. The observations rendered hereinabove, would not affect the mind of the trial Court in any manner whatsoever, during trial of the case.

Dt.20-07-2017.

J U D G E

M.Saleem/*