

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

Cr.M BA No.3751-P/2019

Haji Turab Vs the State

Date of hearing: 01.01.2020


Mr. Farhan Tariq, Advocate, for the petitioner.

Mr. Umar Farooq, AAG, for the State.

Mr. Farman Ali, Advocate, for the complainant.

JUDGMENT

AHMAD ALI, J. After having been failed to get the concession of bail from the learned Trial Court vide order dated 18.12.2019, the petitioner (Haji Turab), seeks his post arrest bail in case FIR No. 27 dated 10.12.2019 under sections 11-(N)/11(F) ATA-1997, P.S. CTD (Mardan).



2. Succinct facts of the case are that the present accused petitioner was apprehended by the local police with an amount of 4840/- of different nominations along with a book on which "TTA" (*Tehreek-e-Taliban Afghanistan*) was written, and when he was found busy in collecting subscription in the shape of cash amount from the people in the Bazaar in the name of *Jehad* and was also instigating people to join "*jehadi outfits*". According, he was booked in FIR ibid, hence the instant petition for bail.

3. Arguments heard and record gone through.

4. Without dilating upon the merit of the case, suffice it to say that the accused petitioner is charged with Section 11(N) and 11(F) of the Anti-Terrorism Act, 1997, therefore, it is deemed appropriate to reproduce said Sections law, which provides as under:-

11-N. Punishment under Sections 11H to 11K.

Any person who commits an offence under sections 11-H to 11-K, shall be punishable on conviction with imprisonment for a term not less than five years and not exceeding ten years and with fine.

For ready reference Sections 11-H to 11-K are also reproduced below:-

11H. Fund Raising.

(1) A person commits an offence if he:

(a) invites another to provide money or other property; and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism 2[or by a terrorist or organization concerned in terrorism.]

(2) A person commits an offence if: (a) he receives money or other property; and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism 1[or by a terrorist or organization concerned in terrorism].

(3) A person commits an offence if he: (a) provides money or other property; and (b) knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism 1[or by a terrorist or organization concerned in terrorism].

(4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

11I. Use and possession.

A person commits an offence if (1) he uses money or other property for the purposes of terrorism; or

(2) he: (a) possesses money or other property; and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

11J. Funding Arrangements

3[(1) A person commits an offence if he (a) enters into or becomes concerned in an arrangements as a result of which money or other property is made available or is to

made available to another; and (b) has reasonable cause to suspect that it will or may be used for the purposes of terrorism. 3[(2) Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or willfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.]

11K. Money laundering.

- (1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property: (a) by concealment; (b) by removal from the jurisdiction; (c) by transfer to nominees;

Whereas, Sections 11(F) provides as under:-

11F. Membership, support and meetings relating to a Proscribed Organization.

(1) A person is guilty of an offence if he belongs or professes to belong to a proscribed organization.

(2) A person guilty of an offence under subsection

(1) shall be liable on conviction to a term not exceeding six months imprisonment and a fine.

(3) A person commits an offence if he: (a) solicits or invites support for support for a proscribed organization, and the support is not, or is not restricted to, the provisions of money or other property; or

(b) arranges, manages or assists in managing, or addressing a meeting which he knows is: (i) to support a Proscribed organization;

(ii) to further the activities of a proscribed organization; or

(iii) to be addressed by a person who belongs or professes to belong to a proscribed organization.

(4) A person commits an offence if he addresses a meeting, or delivers a sermon to a religious gathering, by any means whether verbal, written, electronic, digital or otherwise, and the purpose of his address or sermon, is to encourage support for a proscribed organization or to further its activities.

(5) A person commits an offence if he solicits, collects or raises 1[money or other property] for a proscribed organization.

(6) A person guilty of an offence under subsections

(3), (4), and (5) shall be liable on conviction to a term of imprisonment, not less than one year and not more than five years and a fine.

5. Bare perusal of above Sections of law provides that the punishment for the offences does not fall within the prohibitory clause of Section 497-Cr.P.C.

6. Even otherwise, when except the solitary statement of complainant, no other incriminating evidence is available on file to *prima facie* connect the accused petitioner with the commission of offence, his case would require further probe as provided under Sub-Section (2) of Section 497-Cr.P.C. Therefore, this Court finds no ground to withhold the concession of bail, at least, at this stage. Reliance could be safely placed on PLD 94 P.Cr.L.J 34.

7. Moreover, it has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Reliance could be placed on case reported in 2008 SCMR 807 "Haji Muhammad Nazir Vs State".

8. Before parting with this order, this court finds it necessary to mention that all the observations recorded above are tentative assessment just for the disposal of bail petition and not intended to influence the mind of trial Court, which is free to appraise the evidence strictly in accordance with law and merits of the case and; as per law laid down in (1996 SCMR 1845).

9. For what has been discussed above and on tentative assessment of material available on file a case arguable for the grant of bail is made out. Consequently, the instant

petition is allowed and the accused-petitioner, named above, is admitted to bail, provided he furnishes bail bonds in the sum of Rs.100,000/-, with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

10. Above are the reasons of short order of even date.

Announced:
01.01.2020


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