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BEFORE THE PESHAWAR HIGH COURT BENCH ABBOTTABAD

Cr.M. NO 399-A/15

1. Habib-ur-Rehman s/o Muhammad Zaman r/o House No. 1163, S.N Qayyum Abad Dhoke Kala Khan Rawalpindi.
2. Nizar Ahmed s/o Nawab Khan r/o Batal P.O Jabri, Tehsil & District Haripur

..... Accused/Petitioners

VERSUS

1. The State
2. Muhammad Ali Bhatti President NHSD (Complainant).

..... Respondents

**CASE FIR NO. 300 DATED 14.07.2015 U/S 419/420/406/34 PPC
POLICE STATION KHANPUR HARIPUR**

**BAIL APPLICATION UNDER SECTION 497 Cr.P.C FOR RELEASE OF
ACCUSED/PETITIONER ON BAIL TILL THE DECISION OF MAIN
CASE.**

Respectfully Sheweth:-

1. That the complainant Muhammad Ali Bhatti lodged report through application addressed to the SHO Khanpur wherein he charged the accused/petitioners stated therein that the accused/petitioners had signed the MOU in respect of up-gradation of Friend Hospital Tarnawa, in this connection the medical equipment have been delivered for the purpose therein some equipment including X-Ray Machine have been misappropriated by the accused and they are committed breach of trust with the NHSD working under USAID. The complainant requested for legal action against the culprits as required by law and also requested for registration of case. The copy FIR alongwith better copy is annexed as **Annexure "A"**.
2. That after registration of case, both the accused/petitioners have been arrested by the local police Khanpur, thereafter the local police also applied for police custody for recovery of alleged stolen/ misappropriated X-Ray Machine from the accused/petitioners but noting was recovered nor anything was pointed out by the accused/petitioners.

*No: 3346
04/08/15*

*B
4/8/15*

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M No.399-A of 2015


JUDGMENT

Date of hearing.....02/09/2015

Petitioner...(Habib-ur-Rehman etc) by Mr. Abdul Salam Dilazak,
Advocate.....

Respondent ...(The State etc) by M/S Muhammad Naeem Abbasi,
Additional Advocate General and Irshad Akhtar
Khan and Naveed Ahmad Abbasi,
Advocates.....


QALANDAR ALI KHAN, J:- Habib-ur-
Rehman and Nizar Ahmad,

 accused/petitioners, have been arrested and
are seeking post arrest bail in case vide FIR
No.300 dated 14.07.2015 under Sections
419/420/406 PPC read with section 34 PPC,
registered in Police Station Khan Pur,
Haripur, on the report of
complainant/respondent No.2, Muhammad Ali
Bhatti, President, Network for Human and

Social Development (NHSD), who submitted written application to the Station House Officer (SHO) Police Station Khan Pur, Haripur, thereby reporting about misappropriation of X-ray machine worth Rs.2,500,000/- from the MCH Centre Tarnawa, Haripur, lying there under the administrative control of the accused/petitioners. In his report, the complainant alleged that they were informed about dislocation of the machines from the Centre by the USAID, and the said information was confirmed by the staff of the complainant during their visit to the Centre on 01.07.2015. It was further alleged in the report that the accused/petitioners while acknowledging their negligence, handed over a cheque for an amount of Rs.2,500,000/- to make good the loss of the machine but they later on refused to take responsibility, hence report about breach of trust.

2. After registration of the case, the accused/petitioners were arrested on 14.07.2015 and an interim challan under Police Rules 25.56 was submitted against the accused/petitioners as well as co-accused Arshad on 15.07.2015, followed by another interim challan on 16.07.2015. During investigation, certain documents pertaining to the case have been supplied by the complainant to the I.O, and an interim/complete challan under section 173 Cr.P.C has also been submitted in the case by SHO, Police Station Khan Pur on 26.07.2015. In view of contention of learned counsel for the defence that investigation in the case is complete as complete challan in the case has been submitted by the police/prosecution, the SHO Police Station Khan Pur and Mukhtaj Ali ASI/IO were summoned for clarification whether investigation in the case was complete or otherwise; but only the ASI/I.O appeared today and clarified that the


challan dated 26.07.2015 is interim as investigation in the case is not yet complete owing to the reason that the co-accused Arshad Mehmood is still on ad-interim pre-arrest bail vide order of the learned Additional Sessions Judge-III, Haripur dated 23.07.2015, and that the word 'complete' has inadvertently been written on the Interim Challan Form.



3. Arguments of the learned counsel for the accused/petitioners, learned Additional Advocate General assisted by learned counsel for complainant/respondent No.2 heard, and record perused.

4. In order to prove entrustment of X-ray machine in question alongwith other costly medical equipments to the accused/petitioners, the Memorandum of Understanding (MOU) was palced on file, which was signed by accused/petitioner Nazar Ahmad as Executive Director, Dehi Development Society (DDS) and Doctor Fozia

Moghees, Executive Coordinator NHSD, envisaging therein up-gradation of Maternal and Child Care Centre, Tarnawa, Haripur Project SGAFP (USAID) Tarnawa, Haripur, and obliging the DDS to work for the smooth running of the hospital, Lab, OPD, and also providing for overall security of the Centre and safety of the equipments as the responsibility of the DDS/Doctor Habib, accused-petitioner No.1/staff of the Hospital.

 In order to further augment case against the accused/petitioners, the I.O was provided agreement between the accused/petitioners showing acceptance of responsibility regarding the X-ray machine and their undertaking to provide the machine to the hospital by 1st August, 2015 and also handing over cheque for Rs.2,500,000/- to the NHSD by way of guarantee.

5. During arguments, the learned counsel for the accused/petitioners contended that the accused/petitioners could not be saddled with

responsibility for the missing of the X-ray machine as NHSD had itself provided 'chowkidar' for the hospital. The learned counsel questioned the so-called agreement between the accused/petitioners and urged that the same was forged by the complainant to falsely implicate the accused/petitioners in the case. The learned counsel pointed out that the alleged cheque for Rs.2,500,000/- was not available on the record, which, according to the learned counsel, might also have been forged by the complainant for the same purpose.

6. The perusal of record, particularly MOU between the parties, would show that after acceptance of responsibility for safety of all valuable equipments including X-ray machine, which were entrusted to the accused/ petitioners for running the hospital, by the NHSD, there is indeed a prima facie case of breach of trust on the part of the accused/petitioners when the X-ray machine

was found missing / dislocated. The contention of the learned counsel for the accused/ petitioners that the machine was missing since long and that the 'chowkidar' of the NHSD in the hospital should have reported the matter earlier, is also far-fetched keeping in view the fact that the accused/petitioners had accepted responsibility for safe custody of the equipments under the MOU, which is nowhere denied by them. No doubt, the accused/petitioners dispute execution of the so-called agreement between them and also cheque for Rs.2,500.000/-, but the veracity of their such claim at this stage when the case is still under investigation would involve deep appreciation of evidence, which is not permissible at the bail stage. The I.O who appeared in the Court in pursuance of notice for his appearance, stated at the bar that since the cheque was not yet presented to the concerned bank, the same was not taken

into possession in the case. The learned AAG and learned counsel for the complainant, on the other hand, informed that the cheque has since been dishonoured on presentation, and a case under Section 489-F PPC has also been registered against the accused/petitioners.

7. In view of the above-mentioned material available on the record, there exist reasonable grounds to prima facie connect the accused/petitioners with the offences.

Therefore, notwithstanding the fact that the offences with which the accused/petitioners have been charged do not fall within the domain of prohibitory clause contained in section 497 Cr.P.C, accused/petitioners would not be entitled to the concession of bail in view of exceptional circumstances of the case, as the equipments provided by the USAID through NHSD for the noble cause of treatment of ailing mothers and children have been dislocated/removed, thereby not only

breaching the trust and bringing bad name to the country by shattering the trust of donor agencies, but also causing untold hardships to the needy patients. In such circumstances, the accused/petitioners can neither take shelter under pendency of civil suit on the subject and other technicalities nor can claim the bail as a matter of right in offences which are admittedly non-bailable. (PLD 1968 SC 349, PLD 1997 SC 545, 2000 P.Cr.L.J 105, and 2011 P.Cr.L.J 852).

8. The bail petition is, therefore, bereft of merit, hence dismissed.

Announced.
Dt.02.09.2015.

/*M.S.Awan*/