

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.M.BA. No. 571-M/2016

CONSOLIDATED JUDGMENT

Date of hearing: **19.01.2017.**

Petitioner: - *(Rahmat Razaq) by Mr. Hazrat Rehman, Advocate.*

Respondent: - *(the State) by Barrister Asad Hameed-ur-Rehman, State counsel in person.*

MOHAMMAD IBRAHIM KHAN, J.- It is proffered to dispose of this criminal miscellaneous bail application No. 571-M of 2016 preferred by petitioner Rahmat Razaq in case FIR No. 1188 dated 09.12.2016 charged under section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 registered at Police Station Timergara District Dir Lower. There are connected bail petitions wherein each petitioner has prayed for his release on bail after arrest, particulars of which are given as under: -

- *Cr. M B.A. No. 572-M/2016 titled as “Umar Khitab vs the State”, case FIR No. 1190 dated 10.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on*

Private Loans Act, 2016 Police Station Timergara District Dir Lower.

- *Cr. M B.A. No. 573-M/2016 titled as “Ayub Khan vs the State”, case FIR No. 1187 dated 09.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 Police Station Timergara District Dir Lower.*
- *Cr.M B.A. No. 574-M/2016 titled as “Ubaidullah vs the State”, case FIR No. 1189 dated 10.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 Police Station Timergara District Dir Lower.*
- *Cr.M B.A. No. 579-M/2016 titled as “Wahab Gul vs the State & others”, case FIR No. 1187 dated 09.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 Police Station Timergara District Dir Lower.*
- *Cr.M B.A. No. 580-M/2016 titled as “Wahab Gul vs the State and others”, case FIR No. 1188 dated 09.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 Police Station Timergara District Dir Lower.*
- *Cr. M B.A. No. 581-M/2016 titled as “Wahab Gul vs the State & others”, case FIR No. 1189 dated 10.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest*

on Private Loans Act, 2016 Police Station Timergara District Dir Lower.

- *Cr.M B.A. No. 582-M/2016 titled as "Wahab Gul vs the State & others", case FIR No. 1190 dated 10.12.2016, section 3/4-Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 Police Station Timergara District Dir Lower.*

2. The reason for disposal of all these bail petitions by this singled-out judgment is that alike facts and legal provisions are to hash over.

3. The applications addressed to the District Police Officer Dir Lower at Timergara in undifferentiated cases would reveal that under the garb of *Mudariba* scandal for investments for a particular period fixed interest was to be awarded which remained continued for some time. Later on when money stake was withheld, under the new enacted law called as "Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016" all such cases were registered by the Station House Officer of

Police Station Timergara against the accused/petitioners.

4. Prior to, for each petitioner an application was submitted before the Court of learned Additional Sessions Judge/Izafi Zila Qazi Chakdara Camp Court Dir Lower at Timergara, which met fate in its dismissal.

5. Having heard learned counsel for each of petitioner and learned State counsel appearing on behalf of the State, record with their assistance gone through.

6. Learned counsel for the petitioners mainly relied on ***2016 P Cr. L J 1302 (Peshawar) "Zahid Arif vs Chairman National Accountability Bureau, NAB and others" and PLD 2007 Peshawar 39 "Messrs. Gul Cooking Oil and Vegetable Gee (PVT) LTD through Chief Executive vs Pakistan through Chairman Revenue Division, Central Board of Revenue Islamabad and 6 others"***. In view of the dictum laid down in the earlier referred judgment of the Hon'ble Peshawar High Court

it was emphasized that while interpreting the statute retrospective effect principle laid down is that only that law can be given retrospective effect which brings some changes in procedure. No retrospective effect can be given to a substantive law under which certain rights accrues to a person. Whereas the latter judgment as has been argued is the mother judgment that whenever there is an amendment made by the Parliament or Provincial Assembly such an amendment shall not apply to the Tribal Areas automatically. It is with the process as envisaged in Article 247 of the Constitution that the President of Pakistan and not the Parliament to decide which Act was to be applied in the Tribal Areas. For this specific area where if cognizable offence is committed the provisions of the enacted law is not applicable as there is no specific empowerment by either the Worthy President or Governor of Khyber Pakhtunkhwa to have made applicable this new enacted law to the Provincially Administered Tribal Areas. Inversely, the learned State counsel appearing

on behalf of the State did not agree to the arguments advanced before the Court and wanted to assure that the law pertaining to the Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 is extendable to the whole of the province. Since then it has come into force at once on its promulgation, thereby opposed the grant of bail to each petitioner.

7. Yes by this entity's existence the Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 has since come into force and has been extended to the whole of the province. whether the Worthy President of Pakistan or Governor of Khyber Pakhtunkhwa assent is the requirement who by either special Notification in this behalf has extended this Act to the District Dir Lower. At present on tentative assessment, there seems to be an anomaly by providing for an action to be taken against the persons who either lend the money or advance loan to any person for the purpose of receiving interest thereof. On plain perusal of Section 6 of the Act *ibid*, which reads as under: -

6. Complaint. --- A justice of peace shall, within three days on receipt of any application or complaint with regard to the commission of an offence under this Act, order the local police to register a case against such person or group of persons.”

Whereas under section 9, such offence has been declared cognizable. The relevant section 9 states:

9. Cognizance of offences--- Notwithstanding anything to the contrary contained in the Code or any other law for the time being in force an offence under this Act shall be cognizable, non-compoundable and non-bailable.

8. While the cases are to be registered only when complaint is filed before the Ex-officio justice of peace of the area. Upon his satisfaction that cognizable case has been made out only then such complaint with regard to the commission of offence under the Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 can only be registered through first information report.

9. There is no other procedure given for registration of the case under the *ibid* Act. Thereby all these cases which have been

registered either by ASHO or SHO of Police Station Timergara without recourse to first file complaint before the Ex-officio justice of peace and upon his recommendation could only register the case against the accused/petitioners.

10. Under the new enacted law pertaining to Prohibition of Interest on Private Loans Act, 2016, the punishment in contravention of the provisions of sub-section (1) has been made punishable with imprisonment of either description which may extend to ten years but shall not be less than three years and shall also be liable to fine not exceeding one million rupees. While considering an application for bail it shall not be an encumber to keep in view the maximum sentence provided by the Act *ibid*, but the one likely to be entailed by the facts and circumstances. Ref. **2002 P Cr. L J 147 (Peshawar) "Shadi Khan vs the State"**.

11. On the face of the registration of each case against each petitioner when the

complainant being a Police Officer has not followed the procedure under section 6 of the Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 and none of the case has been registered under the order of Ex-officio Justice of peace to the local police to register such case. There are reasons to believe that the ASHO/SHO of Police Station Timergara has bypassed the law in this behalf leaving scope for further inquiry into guilt of each petitioner.

12. In view of what has been discussed above, all these connected petitions for the grant of bail are allowed. Each petitioner is entitled to the concession of bail subject to his furnishing bail bonds in the sum of Rs. 100,000/- (Rupees one lac) with two sureties each in the like amount to the satisfaction of learned Illaqa Qazi/Judicial Magistrate/MOD, who shall ensure that the sureties are local, reliable and men of means.

These are the reasons of my short orders of even date.

Announced
Dt: 19.01.2017.

JUDGE