

## **JUDGMENT SHEET**

### **PESHAWAR HIGH COURT, ABBOTTABAD BENCH**

#### **JUDICIAL DEPARTMENT**

**Cr.Misc.B.A.No.405-A/2017**

#### **JUDGMENT**

Date of hearing.....10-07-2017.....

Petitioner (s)... (Zaheer Ahmad) by Mr. Muhammad  
Arshad Awan, Advocate.....

Respondent (s)....(The State etc) by M/S Amina  
Imam, Advocate (State Counsel)  
and Muhammad Shafiq Awan,  
Advocate.....

\*\*\*\*\*

#### **SYED MUHAMMAD ATTIQUE SHAH, J.-**

Through this single judgment, this Court shall dispose of three bail petitions, as all these petitions pertain to one and the same case F.I.R. The particulars of the bail petitions are as under:

- (i) Cr.M No.405-A/2017 Zaheer Ahmad Vs. The State and another.**
- (ii) Cr.M No.387-A/2017 Muhammad Naeem Vs. The State and another.**
- (iii) Cr.M No.388-A/2017 Zakir Vs. The State and another.**

Accused-petitioners, Zaheer Ahmad, Muhammad Naeem and Zakir seek their post arrest bail in case FIR No.441 dated 01.05.2017 under sections

419/420/468/471/34 of Pakistan Penal Code, 1860 registered at Police Station City, Mansehra.

2. The case of the prosecution against the petitioners, registered on the report of complainant Jehanzeb, is that he is a property dealer at Mansehra; that on 15.03.2017, Muhammad Naeem, Zakir, Nazir Khan, Muhammad Waseem came into his office 'Muslim Property Dealer' and Nazir told him that he wants to sell his property bearing Khasra No.618, 508 and 537, measuring 59 kanals 5 marlas, situated in Mauza Batdarian. The complainant after satisfaction regarding genuineness of ownership, struck bargain for a sum of Rs.41,800,000 and paid them cash amount of Rs.4,500,000/- and also issued a cheque of Rs.1,500,000/- to them. Later on, the complainant after an inquiry into the matter, came to know that the real owner of the property in question namely, Nazir son of Abdur Rehman, is an insane person and his father denied sale of the property and he also came to know that the person introduced himself as Nazir is actually Zaheer son of Abdur Rehman. The complainant charged the said persons for cheating and defrauding the complainant by obtaining a huge amount of Rs.60,000,000/- from him by impersonation.

3. Arguments of the learned counsel for the accused/petitioners and learned State counsel assisted by learned counsel for the complainant heard and record perused with their able assistance.

4. Perusal of record reveals that the complainant after his satisfaction about the genuineness of the ownership of the property entered into the alleged bargain of the property and paid Rs.4,500,000/- cash and a cheque of Rs.1,500,000/- to the present accused/petitioners and the co-accused Abdur Rashid on 15.03.2017, whereas the present F.I.R has been lodged against the accused/petitioners on 01.05.2017 after delay of 45 days. Moreover, it is astonishing that the complainant before lodging the present F.I.R. against the accused/petitioners has obtained affidavits and promissory notes of Rs.14,300,000/- from them, which amount is double than the amount in question, which creates doubt. The I.O has not recorded the statements of the witnesses of the affidavits as well as statement of Bank Manager of MCB regarding confirmation of encashment of cheque of Rs.1,500,000/- by the accused/petitioners. At this moment this Court cannot enter into threadbare discussion regarding the transaction took place between the parties, as it is the

job of the trial Court, however, in view of the peculiar facts and circumstances, this Court considers that the case against the petitioners is that of further inquiry into their guilt. Moreover, the offence under section 419 PPC provides three years punishment, whereas section 420 PPC is bailable and in view of the facts of the present case, sections 468/471, prima facie seem to be not applicable to the case of the petitioners.

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/petitioners are 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 them behind the bars.

7. Consequently, these bail applications are accepted and accused-petitioners, Zaheer Ahmad, Muhammad Naeem and Zakir is admitted to bail, subject to their furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Hundred Thousands), each, with two sureties, each in the like amount to the satisfaction of the *Illaq*a/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.10-07-2017.**

**J U D G E**

**M.Saleem/\***