

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

Cr.M/EA. No. 540-P/2015

Date of hearing... 03.04.2015

Muhammad Usman etc Vs The State.

Petitioner(s) by Mr. Azhar Yousaf, Advocate.

Respondent(s) by Mr. Atif Nazir, Standing Counsel on behalf of State.

GALANDAR ALI KHAN, J:- After refusal of bail to them by the Courts below, the accused/petitioners, Muhammad Usman and Muhammad Shahbaz, are seeking post arrest bail in case vide FIR No. 15/2014 dated 16.12.2014 under sections 36 & 37 ETO 2002, Police Station FIA (NR3e), Peshawar.

2. The facts revealed in the FIR are that Inspector Shahid Ilyas, FIA Cyber Crime Circle, Peshawar, received information about illegal grey traffic of running illegal gateway exchange through PTCL, EVO, 3G Wingle wireless USB device in the suburbs of Peshawar City, without any license from the concerned government authorities, making it vulnerable to be used for criminal activities. Initially, accused/petitioner, Muhammad Usman, was suspected as the main culprit, involved in the

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Peshawar High Court

business, and also in using pre-activated illegal SIMs activated in the names and CNIC particulars of different people across Pakistan; and the accused/petitioner was intercepted in the Daewoo Bus Terminal, Peshawar, and during search of his vehicle, one illegal gateway machine alongwith 16 pre-activated SIMs, one PTCL EVO 3G Wingle wireless USB device and one Laptop were recovered. Likewise, 14 pre-activated SIMs were shown to have been recovered from the personal search of his companion namely Muhammad Shahbaz Masood, resident of Rawalpindi. The accused/petitioners were, therefore, arrested on the charges of causing heavy loss to the National Exchequer and establishing parallel communication system for criminal activities without any license.

3. The petitioners have approached this Court for their release on bail, mainly, on the grounds of serious illness of accused/petitioner, Muhammad Usman, lack of direct and circumstantial evidence to connect the accused/petitioners with the commission of the offence and non-verification of the recovered SIM cards. The learned counsel for the accused/petitioners further contended that



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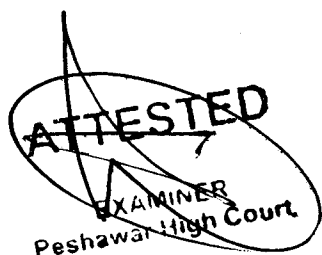
punishment prescribed for offences under both sections of law did not exceed 07 years imprisonment, thus falling outside the prohibitory clause contained in Section 497 Cr.PC. The learned counsel also contended that imposition of fine was prescribed as an alternate punishment, therefore, confinement of the accused/petitioners in Jail when there is possibility of imposition of only fine as a punishment in case of proof of charge against the accused/petitioners, would amount to double jeopardy. In order to augment his arguments, the learned counsel referred to an unreported judgment of this Court dated 04.03.2015 in bail petition titled **Asif Medhmood Vs the State (Cr.M/BA. No. 303-P/2015)** and also another judgment reported as 2011 CLC 150 (Karachi).

4. The learned counsel for the state, on the other hand, focused his arguments on the prevailing law and order situation in the country, and role played by the recovered equipments in facilitation of such crimes.

5. One cannot remain oblivious to the precarious law and order situation in the country, but at the same time liberty of the citizens cannot be curtailed on mere presumptions and conjunctures

that the recovered equipments might have contributed to the escalation of the already dangerous situation if used for fulfillment of the sinister objects by some unscrupulous elements out to destroy peace and tranquility in the country; especially when the allegations of the prosecution in the FIR centers on heavy loss to the National Exchequer and establishment of parallel communication system for criminal activities without any license. Needless to say that no evidence is forthcoming, prima facie substantiating either of the allegations, as even forensic report has not been received so far, proving the equipments to be in working condition, neither recovered SIM cards have yet been verified. All this is bound to make case of the accused/petitioners that of further inquiry.

6. Moreover, the offences with which the accused/petitioners have been charged under both sections of law carry maximum penalty of 07 years, thus falling outside the ambit of prohibitory clause contained in Section 497 Cr.PC. The provision with regard to imposition of fine as an alternate punishment would also make the accused/petitioners entitled to bail, as in case of



refusal of bail to them and sending them behind the bars for an indefinite period may amount to double jeopardy, in case only fine is imposed on them as a punishment on conclusion of trial and proof of case against them.

7. In any case, investigation in the case is complete, as complete challan has been submitted on 02.03.2015, implying thereby that the accused/petitioners are no longer required to the prosecution/police for the purpose of investigation.

8. Consequently, on the acceptance of the application, both the accused/petitioners are admitted to bail in the case, subject to their furnishing bail bonds in the sum of Rs. 2, 00,000/- (two lacs) each with two sureties each in the like amount to the satisfaction of the concerned Magistrate, who shall ensure that the sureties are local, reliable and persons of means.

Announced.

Dt. 03.04.2015.

sd/ Qalandar Ali Khan

[Signature]
JUDGE

CERTIFIED TO BE TRUE COPY

[Signature]
Examiner
Peshawar High Court, Peshawar
Authorised under Article 178
The Qanun-e-Shahadat Order

30 APR 2015

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