

PESHAWAR HIGH COURT ABBOTTABAD
BENCH
 JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. M (Bail) No. 352-A/2020.

Date of hearing 08.05.2020.

Petitioner/s (Qari Muhammad Arshad & two others) by Mr. Asjad Parvez Abbasi, Advocate.

Respondent/s (State) by Mr. Muhammad Muslim, Advocate/State Counsel.

AHMAD ALI. J. Through this petition, accused/petitioners namely *Qari Muhammad Arshad & two others* seek their release on bail, who are charged in case FIR No.11 dated 21.12.2019 under Sections 11 F (2)(6), 11H (2), 11i, 11J, 11N of Anti-Terrorism Act, registered at Police Station, **CTD**, Hazara Division, **Abbottabad**. Earlier their plea for post arrest bail was declined by the learned Court below vide order dated: 27.04.2020.

2. Succinctly, the facts of the case as narrated in the first information report are that the complainant/SHO on 06.03.2019 in search of terrorists and their abettors

was on gust alongwith police *nafri* in the area, where he received secret information that organizations i.e *Jamat-ud-dawa* and its sub-organization i.e *Falah-e-Insan-e-yat*, which have already been declared proscribed organizations are involved in providing assistance to terrorist, and that present accused/petitioners being members of said organizations have obtained certain properties and in the garb of “*work of public welfare*” they are using *Madrassas* for financing the terrorism. Hence, the instant FIR.

3. Arguments of learned counsel for petitioners as well as learned State counsel heard and record available gone through with their valuable assistance.

4. Learned counsel for petitioners argued that the accused/petitioners are innocent and falsely charged in the case as no direct or indirect evidence is available on file to disclose that accused/petitioners are involved in terrorism financing. Further argued that

so-called confessional statements of accused/petitioner available on file is outcome of torture and undue influence and that all the sections of law levelled against them are also bailable.

5. On the other-hand learned State counsel submitted that accused/petitioners are involved in terrorist activities and in the shadow of public welfare activities, they are collecting money and financing terrorism. He further argued that accused/petitioners also recorded their confessional statements, which supports the version of prosecution.

6. Learned State counsel during course of arguments mainly relied upon the confessional statements of accused/petitioners recorded during investigation, before the Superintendent of Police, CTD, Hazara Region, Abbottabad. I have gone through each and every confessional statement of accused/petitioners available on file, which reveal that petitioner were arrested on 10.03.2020, and produced before the

competent Court on the next day i.e on 11.03.2020, who granted 07 days' police custody/remand of petitioners till 18.03.2020. On 18.03.2020 accused/petitioners were again produced before the Court and their further police custody was sought by submitting that on 18.03.2020, the accused/petitioners have confessed their guilt before Superintendent of Police CTD, Hazara Division, Abbottabad. The said confessional statements reveal that same were recorded during police custody and before the police and all were written down in the same pattern and only 10+10 minute' time provided to the accused/petitioners to think over and make confessions, which aspect of the case makes the entire process of admitting guilt by the accused/petitioners doubtful.

7. Perusal of confessional statements also reveals that the control of Madrassas, to whom the accused/petitioners were managing, had already been taken over by the provincial government and even their

employees are also being paid by the government. Furthermore, the record as well as the confessional statements nowhere reveal that when, how and by whom the accused/petitioners used to get aid/donations etc and through what source same were being transferred to the banned organizations and used for terrorist activities. However, leaving aside all the above discussion, the question that whether the said confessional statements were recorded without undue influence or force etc or not, would be seen/determined at the time of trial, as same cannot be relied upon or discarded at the bail stage.

8. Apart from the above, the offences for which the accused/petitioners are charged do not fall within the prohibitory clause of section 497 Cr. P.C. For ease, the relevant sections are reproduced which are as under:-

11F (2),(6).

A person guilty of an offence under sub-section (1) shall be liable on conviction to a term not exceeding six months imprisonment and a fine.

A person guilty of an offence under sections (3), (4) and (5) shall be liable

on conviction to a term of imprisonment not less than one year and not more than five and a fine.

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 arrangement as a result of which money or other property is made available or is to be 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.]

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.

9. 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.”

Similarly, the august Apex Court, in unequivocal terms held in **Muhammad Tanveer's case** (PLD 2017 SC 733) that:

“Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts.

Although in some special laws there are specific provisions, limiting the scope of section 497, Cr.P.C. however, this Court in many reported cases has laid down binding principles that the provisions of section 497, Cr.P.C. shall not be ignored even in those cases and the guiding provisions/principles given therein shall always be kept in mind while considering the grant or refusal of bail.

In this regard the case of The State v. Syed Qaim Ali Shah (1992 SCMR 2192) and the famous case of Khan Asfandiyar Wali and others v. Federation of Pakistan (PLD 2001 SC 607) are much relevant, where principle of section 497, Cr.P.C. was held to be applicable even to such cases of course subject to slight limitation.

We expect the Courts below to adhere to these binding principles in future and not to act mechanically in the matter of granting or refusal of bail because liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach.”

10. At the moment, except the confessional statements, there is no other incriminating material/evidence is available of file, which could *prima facie* connect the accused/petitioners with the commission of such heinous offence.

11. 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”**.

12. The observations made hereinabove are tentative in nature 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. In this regard the august Supreme Court of Pakistan in **Shuaib Mahmood Butt Vs. Iftikhar-ul-Haq** (1996 SCMR 1845) has rendered clear guidance, which is to the effect that:-

“However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not

intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law at the time of disposal of the case, which of course, needless to say, is the function of the trial Court”.

13. Therefore, this Court would not withhold the concession of bail, at-least, at this stage, as the accused/petitioners have made out their case arguable for the purpose of bail. Hence, the instant bail petition is allowed. Accused/petitioners be released on bail, provided they furnish bail bonds in the sum of Rs.3,00,000/- (three lacs) each, with two sureties, each in the like amount to the satisfaction of learned Trial Court/ Duty Judge, who shall ensure that sureties are local, reliable and men of means.

14. Above are the detailed reasons of my short order of even date.

Announced.

08.05.2020.

Tahir P/Secretary.

J U D G E