

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr: Misc: BA No. 482-B / 2023

Muhammad Ijaz & another.

Versus

The State .

JUDGMENT

Date of hearing 02.10.2023.

For petitioner: M/s. Bashir Khan Wazir
Advocate (through video Link)
and Dost Ali, Advocate.

For the State: Syed Fakhr-ud-Din Shah,
DAG.

FAZAL SUBHAN, J.--- Instant is post arrest bail petition of petitioners Muhammad Ijaz Khan son of Shah Qasim and Aziz ur Rehman son of Wilayat Khan, who are charged in case FIR No.44/2023 dated 20.9.2023 registered under sections 4,5/23 Foreign Exchange Regulation Act, 1947 of police station FIA/CC, Bannu.

2. In this case Tahir Khan SI, FIA/CC, Bannu had information of running the business of illegal foreign currency exchange at Khan Travel shop No. 21 Regal Cinema Market District Bannu, whereafter he along with raiding party went to the said shop and after introduction, the shop was

searched and Pakistani currency 15,75,500/- and UAE Dirham 10,000/- and a booklet containing list of names of persons who were to receive the amount of Hundi/Hawala were recovered. As the accused present in shape namely Muhammad Ijaz and Aziz-ur-Rehman failed to produce any legal justification for running the foreign currency business, hence they were found prima facie connected with the offence under the above referred sections of law, hence mursila was sent to the police station and resultantly the instant FIR was registered.

3. With this background of the case arguments of learned counsel for petitioners and learned DAG for the State heard.

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4. After hearing arguments and tentative assessment of record it is clear that at present it is not established on record that the present petitioners Muhammad Ijaz and Aziz-ur-Rehman are the actual owners of the business known as Khan Travel. At the relevant time Pakistani currency of 15,75,500/- has been recovered, however, keeping Pakistani currency is not a crime under the relevant law. So far as the recovery of UAE Dirham 10,000/- are concerned, at

present the murasila is silent that at the relevant time the petitioners were actually busy in the transaction of Hundi/Hawala. The prosecution has recorded the statement of one Naimat Ullah Khan, who allegedly had received UAE Dirham 1200/- on 25.8.2023 from Khan Travel at the instance and direction of one Tahir Ullah Khan, however, at the time of arrest the said Naimat Ullah Khan is not shown to have been present at the shop of Khan Travel nor he is shown to have received any foreign currency from the petitioners to prove their dealing in the foreign currency exchange. Though some extracts of register were placed on file but the same are yet to be confirmed that these have been used for the purpose of Hundi/Hawala. The offence for which the petitioners are charged also does not fall within the prohibitory clause of section 497 Cr.P.C and in such like cases grant of bail is a rule and refusal is an exception and as no exceptional ground has been shown, therefore, petitioners are entitled for the grant of bail. In this respect reliance can be placed on the case law reported in 2020 SCMR Supreme Court 717, wherein it has been held as under:-

“After hearing the learned counsel for the petitioner and learned Additional Prosecutor General at length and perusal of available record, it has been observed by us that the offence alleged against the petitioner falls outside the prohibitory clause of section 497, Code of Criminal Procedure. Grant of bail in such like cases is a rule and refusal an exception. No extraordinary circumstances are available on record for refusing bail in the petitioner.”

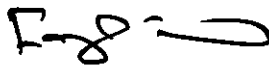
Similarly, in a case registered under Foreign Exchange Regulation reported in 2015 P.Cr.L.J Peshawar 478 this Court while granting bail to the petitioner has held that:-

“In any case, the offence with which the accused/petitioner is charged carries maximum penalty of two years imprisonment or fine or both, thus not only entitling the accused/petitioner to the concession of bail as of right as in case of imposition of only fine on him, refusal of bail to him and his remaining in jail as a consequence thereof would amount to double jeopardy; but also making the accused/petitioner entitled for bail on the ground that the offence falls outside the scope of prohibitory clause contained in section 497, Cr.P.C., notwithstanding the fact that mandatory provision of law contained in the Foreign Exchange Regulation Act, 1947 in respect of search and recovery have, apparently, not been complied with.”

5. For the above mentioned reasons and while relying on the above judgments this petition is accepted and the petitioners are released on bail provided they furnish bail bonds of Rs.5,00,000/- (Rupees Five Lac) each with two local and reliable sureties each in the like amount to the satisfaction of trial Court/ Illaqa Judicial Magistrate/ MOD concerned.

These are the detailed reasons of my short order of even date.

Announced.
02.10.2023.
Ihsan



JUDGE

(S.B)
Hon'ble Mr. Justice Fazal Subhan

06.10.2023
06 OCT 2023
Ihsan