

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

Cr.Misc(BA) No. _1426 of 2015

JUDGMENT

Date of hearing 21.8.2015

Petitioner (by) Muhammad Munir

Respondent (by) State

ROOH-UL-AMIN KHAN, J:- This single order shall dispose of the instant bail application as well bail application No. 1446-P of 2015, whereby the petitioner Muhammad Munir S/O Abdur Rashid seeks his release on bail in case FIR No. 11/2015, dated 18.3.2015 registered at Police Station FIA, Peshawar, under section 36 and 37 of Electronic Transaction Ordinance 2002, section 419, 420 PPC and section 30 NADRA Act,

2. The petitioner being remained unsuccessful to get the discretionary relief of bail from the court below has approached this court for the same relief through the above mentioned two separate criminal miscellaneous applications filed through different counsel, viz the former through Mr. Hidayat Ullah Afridi, Advocate while the latter is filed on 7.8.2015 through Mr. Ghulam Nabi,

Advocate. Both the applications are supported by duly sworn affidavit to the effect that no such bail application has earlier been filed by the petitioner before this court or august Supreme Court of Pakistan. Since both the applications have been filed by the petitioner for grant of same relief, therefore the latter bail application No. 1446-P/2015 being not maintainable as infructuous stand dismissed. It is noted with concern that the litigants have adopted an unprecedented routine of filing successive bail applications through different counsels, by disclosing or without disclosing to them about the engagement of earlier counsel and filing application on the same facts and grounds. Engaging the services of two or more different counsels by accused for attempt to get the same relief on the same facts and grounds is a matter which ostensibly provided fodder to an impression about an extraneous consideration, therefore Honorable the Chief Justice of this court, in pursuance of the judgment of august Supreme Court was pleased to issue broad-spectrum directive to the effect that in future all type of bail applications shall be supported by duly sworn affidavit, disclosing the fact that no such bail application has earlier been filed by the petitioner, before this court or august supreme court, on the same facts and grounds. Regardless the judgment (supra) and directive of Hon'ble

the Chief Justice of this court, the petitioner has filed two different applications for the desired relief on same facts and grounds, so much so, each application is accompanied by an affidavit showing an empathic and explicit declaration that no such petition has earlier been filed. I must admit that I am at a loss to understand why such a pattern is being followed by the petitioner as well his learned counsels and what can be the factual or legal justification for adopting such a pattern. There is in fact no valid or relevant explanation to justify the act of petitioner or his counsels; however it must be reiterated that such an act would not be conducive to fetch any productivity in favour of petitioner.

3. There is yet another aspect of this matter which is also quite disconcerting. On 13.8.2015, the clerk of counsel for petitioner appeared before the Deputy Registrar but due to non availability of the requisite record, the case was posted for further proceeding on 19.8.2015. On the date fixed before the Deputy Registrar, none attended the office; therefore, the case was placed before this court for disposal. Today, despite service none is present from petitioner side which shows lack of interest of counsels for petitioner, in pursuing the instant as well connected bail application. The professional duty

of an Advocate is that he is supposed to appear in Court when a case is called, failing which will indicate lack of respect of counsels toward their professional duties, which is not contributing to the proper administration of justice and is also prohibited by the Legal Practitioner and Bar Council Act. Such behaviors of advocate provide good cause for taking disciplinary action against him, however, without commenting upon the conduct of the counsels for petitioner, suffice it to say that being application for bail, it cannot be kept pending for indefinite period, consequently, the learned Standing counsel was invited to the rostrum to assist the court.

4. Perusal of record would reveal that on complaint of Ms. Shagufta Amin, an inquiry was conducted by Federal Investigation Agency wherein the relevant record was obtained from the Facebook Incorporation including I.P address against the fake facebook profile available on link www.facebook.com/profile.php. As per information provided by Facebook Incorporation, USA the I.P address belong to I.P pool of PTCL. On further investigation the PTCL Regulatory Affair Department provided information that the I.P address were assigned to PTCL landline No.0995-613389 being installed in the name of DDMA at District Coordination Office Haripur. During

raid conducted by the aforementioned agency, the petitioner was found sitting on the computer of DDMA section of Deputy Commissioner Office, who was arrested and interrogated by the FI Agency. During the investigation he disclosed about creating and operating the fake facebook profile in the name of complainant and has also uploaded her personal pictures on the above said profile without her consent. The investigation agency has collected sufficient material coupled with the data from Facebook Incorporation USA through Facebook Law Enforcing online request system, which fully support the allegation of complainant. The arrest of petitioner while using the computer connected to the landline No. of DDMA Section of DCO office, Haripur, further supplement the involvement of petitioner in the crime against society. From the tentative assessment of material available on record coupled with recovery of electronic devices, it is sufficient to affirm that prima facie reasonable grounds exist to connect the accused petitioner with the commission of a heinous offence.

5. In view of the above, the petition being devoid of merit stands dismissed.

6. Before parting with this order, I deem it appropriate to emphasize the role of advocate in legal profession. Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. Accordingly, the set of rules that govern their professional conduct arise out of the duty that they owe the court, the client, their opponents and other advocates. An Advocate enjoys a very high position in the society and the Courts of law as well as the general public repose great trust in Advocates and they are expected to maintain the dignity of the legal profession and not to betray the sacred trust reposed in them. In a recent judgment rendered in case titled Liaqat Ali Khan versus The State and 6 others (PLD 2015 Peshawar 115), this court while laying emphasis on the canon of legal ethics held that “the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously and with extreme conscientiousness those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice”.

7. The menace of filing successive applications for bail by the petitioner is uprising day by day and rapidly

turning the values and norms of legal ethics, code of conduct and etiquettes of legal profession. In such an eventuality, only the members of the lawyer fraternity are expected to come forward for curbing the imperil and threat to legal profession, because the Advocate is under laden duty to maintain the dignity and high standard of the legal profession as well as his own dignity as a Member of the Legal fraternity, both within and outside the Court. It is also estimated that the lawyers shall deflect the course of filing successive and simultaneous bail applications on same fact and ground not only to save and maintain the long established practice of this Court, but also because such a course shall merit of avoiding the possibility of two contradictory orders in the same case by the High Court. I have fearful expectation and virtually having an apprehension, rather it is pinching that such a practice shall tends to encourage malpractice by the accused persons and to bring the judicial system into disrepute, because in the event of a conflicting order being given by another single bench in a subsequent application, an impression, though false, may be created that the second order was based on extraneous considerations.

8. I do not want to lay more stress on the duties of members of legal fraternity except to point out to them

the leading judgments handed down by the august supreme Court in case titled Nazir Ahmed and another Versus The State and others (PL D 2014 Supreme Court 241) wherein the principles of propriety and practice in connection of successive bail application are enunciated. Needless to say that any decision of the Supreme Court, shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on every organ of the state and all the Courts in Pakistan and all judicial authorities throughout Pakistan shall act in aid of the Supreme Court.

9. The Office shall communicate the copy of this order to the secretary Khyber Pakhtunkhwa Bar council for placing it before the General Body of the Council and all presidents and General Secretaries of High Court/circuit benches, District and Tehsil Bar associations for the purpose to ensure the strict compliance of principle enunciated in the judgment of august Supreme Court (PLD 2014 Supreme Court 241) and directive of Honorable the Chief Justice of Peshawar High Court.

Announced on;

21st of August, 2015.

JUDGE