

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr. M No. 499-A of 2015

JUDGMENT

Date of hearing.....

Petitioner.....

Respondent.....

QALANDAR ALI KHAN, J:- Having been declined bail by the learned Special Judge Anti Corruption KPK, Camp Court Abbottabad, vide order dated 16.09.2015, accused/petitioner, Sardar Sameer Asmat, has approached this Court for post arrest bail in case vide FIR No.07 dated 09.09.2015 under Section 161 PPC read with Section 5(2) Prevention of Corruption (PC) Act, registered in Police Station Anti Corruption Establishment (ACE), Haripur, on the report of Haq Nawaz Khan,

complainant/respondent No.2, a government contractor, who reported to the Circle Officer about demand of illegal gratification of Rs.20,000/- by the SDO concerned, the accused/petitioner, in order to issue cheque for return of security to him for the work completed by him for the Public Health Department Haripur. In his report, the complainant offered to serve as trap agent for action against the accused/petitioner.

2. The trap report prepared by Sardar Jawad Ahmed, Judicial Magistrate-II, Haripur, showed recovery of signed 20 currency notes, Rs.1000/- each, from the possession of the accused/petitioner in the presence of staff of Anti Corruption Department. The accused/petitioner was, therefore, arrested in the case.

3. Arguments of learned counsel for the accused/petitioner and learned

Assistant Advocate General heard, and record perused.

4. The complainant/respondent No.2 appeared before the learned Additional Registrar of this Court and expressed his desire to be represented by the State Counsel.

5. The arguments of the learned counsel for the accused/petitioner focused on two essential ingredients of the case, namely, witnessing of passing of money and hearing of conversation between the trap agent and the accused/petitioner by the raiding Magistrate. The learned counsel further argued that no explanation was sought from the accused/petitioner for recovery of the marked currency notes by the Magistrate nor his statement was recorded, and that in his statement recorded by the I.O., the accused/petitioner did furnish his explanation by saying that his father,

Asmat Ullah Khan Gandapur, was posted as SDO in Haripur and that brother of the complainant Haq Nawaz namely Shoukat, Sub Engineer, C & W Haripur, was his subordinate, who had borrowed Rs.30,000/- from his father, out of which, Rs.20,000/- were returned to him by the complainant at the relevant time.

6. Regardless of the plea of defence taken by the accused/petitioner in his statement to the I.O under Section 161 Cr.PC, it is, indeed, a fact that both the offences with which the accused/petitioner has been charged do not fall within the prohibitory clause contained in Section 497 Cr.PC, as maximum penalty prescribed for offence under Section 161 Cr.PC is three years, whereas the penalty provided for Section 5 (2) of the PC Act, 1947, is up to seven years. Moreover, in both the Sections of law, it has been left to the discretion of the trial Court to either award

the penalty of imprisonment or impose fine, or sentence an accused to both the penalties of imprisonment and fine, thus clearly leaving scope of only imposition of fine only at the discretion of the trial Court, in which case refusal of bail to the accused/petitioner, resulting in his incarceration till conclusion of the trial, would amount to double jeopardy, in view of the judgment of this Court reported as **PLD 1993 Peshawar 104.**

7. Even otherwise, grant of bail in offences not falling within the prohibitory clause of Section 497 (1) Cr.PC was a rule and refusal thereof an exception in the light of judgment cited at the bar by the learned counsel for the accused/petitioner i.e. **2013 P.Cr.LJ 1051 (Sindh).** In any case, bail cannot be withheld as a punishment in view of the judgment of the august Apex Court reported as **2011 SCMR 161.**

8. Consequently, on the acceptance of the application, the accused/petitioner is admitted to bail in the case provided he furnishes bail bonds in the sum of Rs.100,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

Announced.
22.09.2015

J U D G E