

IN THE PESHAWAR HIGH COURT,
PESHAWAR

[JUDICIAL DEPARTMENT]

Cr.Misc (BA) No. 1763-P/2020

Petitioner by:	Mr. Ashfaq Ahmad Daudzai, Advocate.
The State by:	Ms Sofia Noreen, Standing Counsel, along with Noor Muhammad ASI.
Date of hearing:	06.07.2020

ORDER

MUHAMMAD NAEEM ANWAR, J.- This petition has been filed by Abdul Wahab son Zahid Ali, resident of Khazana Sugar milla, Charsadda Road, Peshawar, for the grant of post arrest transit bail in a case registered against him, vide FIR No. 820/2020, dated 31.05.2020, under sections 381-A/420 PPC at Police Station, Shah Dara Town, Lahore.

2. Relevant facts, as reflected from the record, are that the present petitioner was arrested by the local police of Police Station, Agha Mir Jani (Khyber Pakhtunkhwa), on 08.06.2020 in a case registered against him, vide FIR No. 626 dated 07.06.2020, under sections 419/ 420/ 468/ 471/411/171 PPC in which he was granted bail by the learned Judicial Magistrate, vide order dated 11.06.2020, however, he could not be released from Jail as he was also involved in another criminal case registered against him under sections 381-A/420 PPC, vide FIR No. 820/20, at Police Station, Shah Dara Town, Lahore,

on 01.06.2020. Since there was no warrant against the petitioner in the above referred case, therefore, a complainant under section 54 Cr.P.C was drafted against him and in pursuance thereof, he was produced before Judicial Magistrate, who, vide order dated 09.06.2020, remanded him to Judicial Lock Up with the direction to intimate the concerned Police Station. Since no arrangement for his shifting to the Province of Punjab was made, therefore, the petitioner filed an application before learned Sessions Judge, Peshawar, under section 86 of the Code of Criminal Procedure with a prayer to grant him post arrest transit bail in the above referred case but it was refused to him, hence, the instant petition.

4. Mr. Ashfaq Ahmad Daudzai, Advocate, appearing on behalf of learned counsel for the petitioner argued that the petitioner is neither charged in the above referred FIR bearing No. 820/20, registered at Police Station, Shah Dara Town Lahore, nor any process have been issued against him as envisaged under Chapter-VI (processes to compel appearance) of the Code of Criminal Procedure, 1898, nor any correspondence have been made regarding his shifting to the Province of Punjab, therefore, confinement of the petitioner in absence of any

warrant by the competent court having jurisdiction amounts to abuse of process of law, therefore, he may be granted transit bail enabling him to appear before the Sessions Judge concerned. Ms. Sofia Noreen, appearing on behalf of the State, half heartedly opposed the petition. To clarify the position, on the previous date of hearing, SHO concerned was directed to appear before the Court and, today, Noor Muhammad ASI is present before the court, who categorically stated that no correspondence, whatsoever, have been made with the Punjab Police regarding shifting of the petitioner, however, he stated that the local police of the concerned Police Station has been informed telephonically.

5. I have perused the order of learned Sessions Judge, Peshawar, dated 15.06.2020, and found it to have been passed in a slipshod manner because in paragraph third of the order, it has been observed that:

“Record of the local police and comments of Superintendent Central Prison, Peshawar perused. The local police of Police Station, Shahdara Town Lahore have initiated the process of shifting the accused in custody to Lahore required to them in case FIR referred above,” but the record of the case and comments of the Superintendent Central Jail speaks otherwise.

6. Chapter VI of the Code of Criminal Procedure provides the mechanism for issuance of process to compel appearance of an accused person or anybody else through issuance of summonses and warrants and procedure by Magistrate before whom person arrested is brought. The relevant section 86 of the Code, *ibid*, for ready reference, is reproduced as under:-

86. Procedure by Magistrate before whom person arrested is brought: (1) Such Magistrate or District Superintendent shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, or District Superintendent or a direction has been endorsed under Section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, or District Superintendent shall take such bail or security as the case may be, and forward the bond to the Court which issued the warrant:

Provided further that, if the offence is not bailable or no direction has been endorsed under Section 76 on the warrant, the Sessions Judge of the sessions division in which the person is arrested may, subject to the provisions of Section 497 and for sufficient reasons, release, the person on an interim bail on such bond or security, as the Sessions Judge thinks fit and direct the person to appear by a specified date before the Court which issued the warrant and forward the bond to that Court.

Nothing in this section shall be deemed to prevent a police-officer from taking security under Section 76.”

A perusal of the above provisions of law shows that when any person is arrested in execution of warrant issued under Chapter-VI, the Judicial Magistrate before whom person arrested is brought, shall, at the first instance, under clause (1) of section 86, issue direction for his removal of custody to the relevant Court, if such direction is not issued, under first proviso, if the offence is bailable or direction has been made under section 76 of the Warrant, shall take bail bonds from him by forwarding the same to the court which issued the warrant and if the offence is not bailable or no direction has been endorsed under section 76 of the warrant, in that case, under second proviso, the Sessions Judge concerned, subject to the provisions of section 497 Cr.P.C and for sufficient reasons, release the person on an interim bail on such bond or security as thinks fit and direct the person to appear by a specified date before the Court which issued the warrant and forward the bond to that Court.

6. In the instant case, neither the petitioner, as per contents of the FIR No. 820/20, referred to above, is nominated as an accused, nor warrant has been issued against him under sections 75/87 Cr.P.C and he has been arrested under section 54 Cr.P.C, therefore he was to be dealt with under the provisions of section

60 Cr.P.C, according to which a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case. When the petitioner has been arrested by the local police under section 54 Cr.P.C and is behind the bars since 08.06.2020 but neither any warrant has been issued against him nor there is correspondence in black and white have been made regarding shifting of the petitioner-accused to Punjab, as depicted from the comments submitted by the Superintendent, Central Prison, Peshawar, therefore, in the present scenario, the petitioner-accused cannot be kept in Jail and that too for indefinite period.

6. In view of the facts and circumstances of the case and while deriving guidance from the case law, **1993 P.Cr. L.J 738 Peshawar**, the petition is allowed, resultantly, the petitioner-accused is directed to be released on interim bail on furnishing bail bonds in the sum of Rs. 2,00,000/- with two sureties each in the like amount to the satisfaction of Additional Registrar (Judicial) of this Court, who shall forward the bonds to the Court concerned for further proceedings at that end in accordance with law. Accused-petitioner is

directed to appear before the proper forum (Court concerned) at Lahore on or before 20.07.2020, failing which the law shall take its own course.

Above are the reasons of short order of even date.

Announced.

06.07.2020

M.ZafraI

J U D G E