

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

Cr.Misc.BA No.1293-P/2015

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.-

My this common judgment shall dispose of the instant bail petition, filed by petitioner Sultan Zeb for his release on bail in case FIR No.8/2013, registered under sections 409/420/477-A/109 PPC and Sections 3 and 4 Anti Money Laundering (AML) Act, 2010, in Police Station FIA, Peshawar and connected **Cr.Misc.BCA Nof.1157-P/20134, titled, “Muslim Commercial Bank Limited Vs Anwar Zeb etc”**, filed by Muslim Commercial

Bank/petitioner for cancellation of post arrest bail of respondent-accused Anwar Zeb, in the aforesaid FIR, granted by learned Judge Special Court (Offences in Banks) Khyber Pakhtunkhwa, Peshawar vide order dated 25.07.2013.

2. The prosecution case is that complainant Pir Tahir Muhammad, Branch Manager MCB, Limited Topi Branch, District Swabi, through his written complaint dated 02.01.2013, reported to local police qua embezzlement/ misappropriation of huge amount from the aforesaid Bank by Cashier Anwar Zeb (petitioner herein) through flying entries/ illegal transactions from the accounts of various customers to his personal joint Account titled Zahir Shah/ Anwar Zeb No.030102010051555; that to conceal his illegal activities, he also changed the position of CCTV Camras of the

Bank. The complainant was referred to FIA on which inquiry was conducted. Later on, during audit process, amount of Rs.34.355 million was found embezzled through flying entries from one account to the other without any voucher, cheque or instrument etc followed by transfer of the same to account of Zahir Shah and Anwarzeb, which amount has been withdrawn by accused/respondent Anwar Zeb from the said account, hence, The Director FIA Khyber Pakhtunkhwa Hayatabad vide Ref.Gen/2 dated 28.01.2013, recommended for registration of FIR against Anwar Zeb and others involved in the commission of misappropriation of the huge amount of different customers from the bank, hence, this case.

3. The instant bail petition was argued from both the sides on merits, however, in connected Cr.Misc.BCA No.11557-P/2013, a

preliminary legal objection was raised by learned counsel for the respondent-accused regarding its maintainability that since the matter falls within the ambit of the Offences in Respect of Banks (Special Courts), Ordinance, 1984, and the same being a special law dealing with the offences relating to Banks, having overriding effect over the general law as provided under S.12, provisions of section 497 (5) cannot be invoked, therefore, the bail cancellation application being not maintainable is liable to be dismissed straightaway.

4. Conversely, learned DAG and learned counsel for the petitioner contended that though there is no specific provision for cancellation of bail under the Offences in Respect of Banks (Special Courts), Ordinance, 1984, but at the same time there is no bar in having recourse to the provision of general law in the Ordinance

ibid when the Special Law is silent on a point; that Cr.P.C. is applicable as there is no specific bar or prohibition of provisions of S.497 Cr.P.C. in Offences in Respect of Banks (Special Courts) Ordinance (IX of 1984). They contended that this court has power to hear and dispose of the bail cancellation on merits.

5. After hearing the respective submissions advanced from both the sides on the aforesaid legal point, I am of the view that Criminal procedure Code, 1898, though is meant primarily to regulate the investigation, inquiry and trial under the Pakistan Penal Code, 1860 in terms of S.5 (1) Cr.P.C., but it stipulates an exception in terms of S.5 (2) Cr.P.C. Mandate of S.5 (2) Cr.P.C. is that persons who are proceeded against under the Special Law, shall be dealt with and their cases inquired into, investigated and tried according to the procedure

laid down in the said Special law, but in a situation where an enactment provides a special procedure only for some matters then such matters would be dealt with according to the procedure laid down in the said Special Law, but where, the Special Law is silent on any matter, the provisions of Criminal Procedure Code 1998 shall apply. Control of Narcotic Substances Act, 1997, is a Special Law and S.51 of the Act *ibid*, deals with the matter of bail, but has been held by the august Supreme Court in case titled, **“The State through Deputy Director Anti Narcotic Force Karachi Vs Syed Abdul Qayum”** that despite prohibition contained in S.51 of Control of Narcotics Substances Act, 1997, the Sessions Court and the High Court had the powers to grant bail as applicability of S.496, 497 and 498 Cr.P.C. has not been totally barred in respect of cases under the said Act.

Same is the view of the Apex Court in case titled, **“Gul Zaman Vs the State” (1999 SCMR 1271)**. Same is the position in the case in hand, if the Offences in Respect of Banks (Special Courts) Ordinance, is silent qua cancellation of bail, provision of section 497 Cr.P.C. can be invoked. Accordingly, the preliminary objection of the learned counsel for the accused/respondent being not sustainable, is hereby turned down.

6. Now coming to the merits of the case. It appears from the record that respondent-accused Anwar Zeb, who has been granted bail on the sole ground of non-recording of statement of Chowkidar of the Bank by the learned Trial Court, was the cashier of the bank during the days of incident and a huge amount of Rs.34.355 million has been embezzled through flying entries from one account to the other of

various customers, without any voucher, cheque or instrument etc followed by transfer of the same to his account, and later on, withdrawing the same from his account No.030102010051555. As regard petitioner Sultant Zeb, he is uncle as well as father-in-law of accused/respondent Anwar Zeb and sufficient evidence has been collected during investigation that petitioner Sultan Zeb had has spoiled sufficient money in gambling, which amount had been obtained by him from different people, and respondent-accused Anwar Zeb in order to save the skin of his uncle/ father-in-law cheated the bank/ embezzled a huge amount in millions through Flying entries. On tentative assessment of the material on record, the connivance of both the accused with each other is visible, hence, they are prima facie connected with the commission of offence. The learned Trial Court

has erred in law while granting bail to accused/respondent Anwar Zeb.

6. No doubt, besides merits, petitioner Sultan Zeb has also agitated for his release on bail on medical ground i.e. being a chronic heart patient, but he has not annexed any document to show previous history of his disease nor has been examined by the Standing Medical Board. During the course of arguments, learned counsel for the petitioner was confronted with the aforesaid ground, but he did not request for examination of the petitioner through a Standing Medical Board, therefore, in absence of any authentic report qua illness of the petitioner by any Standing Medical Board or any report from the concerned Jail authorities about deficiency of proper treatment to meet the requirement of illness of the petitioner, therefore, any findings of this court on this ground would be premature.

7. Accordingly, the instant petition of petitioner Sultan Zeb being without merits stands dismissed while connected Cr.Misc.BA No.1157-P/2013, is accepted. Impugned bail granting order dated 27.05.2013 is hereby re-called. Accused/Respondent Anwar Zeb present in the Court is taken into custody and sent to Judicial Lockup. His sureties are absolved from liability of bail bonds.

Announced
03.09.2015

J U D G E

