

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

Cr. Misc: B.A No. 423-B/2023.

**Zamin Ullah
Vs
The State and another.**

JUDGMENT

Date of hearing 14.9.2023.

For petitioner:- Mr. Muhammad Rashid Khan Dirma
Khel, Advocate.
For State:- Mr. Habib Ullah Khan, AAG.
For respondents:- Mr. Muhammad Saleem Awan,
Advocate.

FAZAL SUBHAN, J.- Through instant petition the petitioner Zaminullah son of Zaley Mir seeks his release on bail in connection with case FIR No.03 dated 24.8.2023 registered under sections 5 (2) PC Act/161 PPC of Police Station Anti-Corruption Establishment, District Bannu.

2. In this case one Rashid Ullah son of Gul Khan reported to the officer incharge police station Anti-Corruption Establishment, Bannu on 24.8.2023 that he has purchased 30 marlas of land from one Sibghat Ullah Shah and when he contacted the Patwari Halqa for attestation of

mutation, he demanded Rs.2,40,000/- for that purpose, whereafter he handed over Rs.1,40,000/- to him but the Patwari Halqa is still demanding the remaining amount, however, he is not ready to bow down to his demand or to pay the gratification, hence offered himself to become a trap agent. The report of the complainant was reduced in the shape of present FIR, whereafter application was submitted to the learned District & Sessions Judge, Bannu for appointment of a raiding Magistrate and Mr. Abdul Qayum, Civil Judge, Bannu was accordingly deputed for the purpose of raid. On the same day a raid was conducted and petitioner was arrested along with bribe money of Rs.1,00,000/-. After his arrest he applied for grant of bail in the Court of learned Special Judge Anti-Corruption Southern District Headquarters at Bannu, however, he failed to secure his bail, hence the petitioner has come up with the instant bail application.

3. Learned counsel for petitioner in his arguments submitted that the complainant after purchase of 30 marlas of land was to pay Government dues and taxes in accordance with law and that as per calculation mentioned in para No.4 of the petition, the complainant was to pay different kinds of taxes at the market value of the land i.e. Rs.18,50,000/- ,

which include 2% mutation fee, 2% MC fee, 3% FBR tax and 6% another FBR tax which comes to 30% of the total market value and in this way the complainant was to pay Rs.2,40,000/- as taxes. That complainant paid Rs.1,40,000/- and was to pay the rest of the amount of Rs.1,00,000/- at the time of attestation of mutation. That the mutation of the complainant has already been entered and was to be attested subject to payment of Rs. 1,00,000/-, however, a false and fake raid was conducted to rope the petitioner in the instant case. His contention is that the amount recovered from the petitioner was not a gratification rather it was part of the Government taxes on the attestation of mutation. He next submitted that section 5(2) PC Act provides maximum punishment for 07 years which does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in such offences is a rule and refusal an exception.

4. Learned counsel for complainant on the other hand submitted that after observing all legal formalities in respect of the raid, Magistrate was deputed to supervise the raid and during the raid Rs.1,00,000/- gratification amount was recovered from the direct possession of the petitioner. His contention is that total taxes payable on the mutation were Rs.1,60,150/-, whereas the petitioner was demanding

Rs.2,40,000/-. According to him under section 42-A of the West Pakistan Land Revenue Act, the fee or taxes payable on the mutation were to be paid on the date on which the revenue officer has to pass an order on the mutation and as no mutation has been attested so far, therefore, the demand of the petitioner was illegal and, therefore, being arrested on the spot with tainted money, hence he is not entitled for grant of bail.

5. After hearing the above arguments and tentative assessment of record, irrespective of the fact that the process of raid etc was conducted in accordance with law and rules, however, the main question yet to be determined is as to whether the complainant, who wanted the attestation of mutation of 30 marlas of land in his favour was to pay Rs.2,40,000/- as Government taxes or the petitioner was demanding excess amount as illegal gratification. Admittedly, mutation has already been entered and the revenue officer is to attest the same subject to payment of remaining amount. Record shows that petitioner has already issued a receipt of Rs. 1,40,000/- to the complainant. In such an eventuality a prima facie arguable case is made out by the petitioner in his favour. The offence for which the petitioner is charged carries maximum punishment of 07

years which does not falls within the prohibitory clause of section 497 Cr.P.C and grant of bail in such like cases is a rule and refusal an exception. In identical case "Muhammad Afzal-Vs- State" reported in 2005 P.Cr.L.J Lahroe 1814, it was held in the following manner:-

" The offence do not fall within the prohibitory clause, thus, entitling him to the grant of bail and in such like case, grant of bail is a rule and refusal thereto is an exception. Respectfully reliance is placed on PLD 1995 SC 34. The petitioner is a Government servant and there is no likelihood of his absconding."

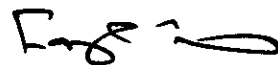
6. In light of the material available on file this petition is accepted and the petitioner is released on bail subject to furnishing bail bonds of Rs.5,00,000/-(Rupees Five Lac) with two local and reliable sureties each in the like amount to the satisfaction of trial Court/ Illaqa Judicial Magistrate/ MOD concerned.

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

Announced.

14.9.2023.


Ihsan.*/-



JUDGE.

(S.B)

Hon'ble Mr. Justice Fazal Subhan.



19 SEP 2023

