

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.M 76-M of 2016
(Quashment)


Petitioner(s): (Muhammad Faisal Shah) by
Barrister Dr. Adnan Khan,
Advocate.

Respondents: (State) by
Mr. Suleman Khan, Advocate.

(Khaliq-ur-Rehman) nemo.

ORDER

Date of hearing: **31.01.2018**



ISHTIAQ IBRAHIM, J.- This petition within the meanings of section 561-A Cr.P.C has been directed against the order dated 10.3.2016 rendered by the learned Additional Sessions Judge/Izafi Zila Qazi, Dir Upper, whereby learned Court while granting bail to the petitioner/accused also directed the petitioner to deposit the compensation amount of *Arsh* equal to 5% of *Diyat*.

2. In essence, the present petitioner being accused in the case FIR No.340 dated 03.4.2015 registered under section 337-A(ii) PPC at Police Station Dir, moved bail petition

before the learned Additional Sessions Judge/Izafi Zila Qazi, Dir Upper, which was accepted and the petitioner/accused was admitted to bail by furnishing bail bonds in the sum of Rs.80,000/- with two sureties, but at the same time, he was also directed to deposit amount of *Arsh* equal to 5% of *Diyat*, which shall be paid to the complainant/injured as compensation, if the prosecution succeeded to establish guilt of the accused after conclusion of trial otherwise he will be at liberty to withdraw the same. Pursuant to bail order dated 10.3.2016, in addition to bail bonds, an amount of Rs.85,000/- was also deposited by the petitioner in the learned Lower Court as *Arsh*. Feeling aggrieved to the extent of imposing this condition on the petitioner/accused, he filed the instant petition.

3. Arguments heard and record gone through.

4. The moot question, which is to be answered by this Court through this order, is

as to whether a Court at bail stage while releasing an accused on bail subject to furnishing of bail bonds can simultaneously impose the condition of depositing the amount of *Arsh/Diyat* in advance or otherwise. To answer this question, it would be appropriate, first to see that what is bail? Bail has not been defined in the Code. However, the word 'bail' has acquired a clear meaning in our legal system. In case of 'Mian Mahmud Ali Qasuri and another Vs. The State' reported in **PLD 1963 SC 478**, the following observation was made in respect of 'bail'.

"The connotation of the word 'bail' itself, as understood in law, supports the position adopted by the learned counsel on behalf of the appellants. An accused person is said, at common law, to be admitted to bail, when he is released from the custody of the officers of the Court and is entrusted to the custody of persons known as his sureties, who are bound to produce him to answer, at a specified time and place, the charge against him and who in default of so doing are liable to forfeit such sum as is specified when bail is granted."


Chapter XXXIX of the Code of Criminal Procedure deals with bail matters. Bare reading of section 497 Cr.P.C would reveal that the same nowhere empowers the Court to ask for cash/security deposit, rather in a case falling within the ambit of section 497 (2) Cr.P.C bail can be granted to an accused with or without the sureties. Section 498 Cr.P.C deals with the amount of bail bonds, whereas section 499 Cr.P.C deals with bond of accused and his sureties, which is reproduced as under for ready reference.

“499. Bond of accused and sureties. —(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.”

In addition to the above, the only one provision i.e. section 513 of the Code of

Criminal Procedure provides mechanism for depositing cash amount instead of surety bond, which is reproduced below for the sake of convenience:

“513. Deposit instead of recognizance. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behavior, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.”



The above referred section would construe that the deposit of amount is an option available to the accused in case he is unable to arrange sureties for his release on bail, if already granted by the Court, as the words of '*in lieu of executing such bond*' have been used, therefore, in the impugned bail order there was no need to specifically bound down the petitioner/accused with such a condition that too at bail stage. Reliance is placed on the case of 'Masood Khan Vs. the

State' reported in 1996 MLD 502, wherein it had been held that.-

“The accused belongs to Lahore and does not seem to have sufficient links at Peshawar and hence his learned counsel as well as his mother and wife have stated at the bar on behalf of the accused that the deposit of cash amount would be preferred and so is prayed for. The reason being genuine, the prayer of the learned counsel is accepted and under section 513, Cr.P.C, the accused is permitted to deposit the amount in cash.”

5. In the present case, as the required bail bonds have already been executed on behalf of the petitioner/accused by his sureties, therefore, depositing the amount of *Arsh* particularly at this stage would serve no useful purpose. Moreso, it appears that the findings of the learned Lower Court in the bail granting order to the extent of the imposing the condition of depositing the cash amount does not speak to have been given within the spirit of section 513 of the Cr.P.C, which is an enabling provision and provides that except in cases of bonds for

maintaining good behavior, a Court can direct an accused to deposit cash amount in fit cases, however, nothing exceptional could be noticed in this case nor the learned Lower Court did record its findings in the impugned order to that effect and in absence of such exposure by the learned Lower Court in the impugned order. Moreover, according to section 53 of the PPC, *Arsh* is punishment, which is to be awarded to an accused if he is found guilty of the offence charged with, therefore, on this reason, there would be substance in the argument of the learned counsel for the petitioner/accused that such directions in advance to the petitioner amounts to his pre-trial conviction, which is not justified at this stage. Furthermore, it is not the case here that the amount of bail bonds or security has been substituted on the request of the petitioner/accused and the fact of having no objection on the part of learned counsel for the petitioner/accused to deposit the amount of *Arsh* on his behalf for his

release on bail itself does not confer any jurisdiction/authorization upon a Court. In addition to the above, there was no compromise in the case in hand to laid down such condition. As such, the impugned order to the extent of such condition is not maintainable. Thus, this petition is allowed and the impugned order is modified only to that extent. The petitioner/accused may accordingly withdraw the amount of Rs.85,000/- so deposited by him in the learned Court below.

Announced
31.01.2018

JUDGE

9/1/18
2/2
WK