

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.166-L of 2020

*(Against order dated 17.2.2020 of the
Lahore High Court, Lahore passed in
Cr.Misc No.2799-B/2020)*

Hassan Javed

...Petitioner(s)

Versus

The State & Nasr Hussain

...Respondent(s)

For the Petitioner(s): Ch. Imran Raza Chadhar, ASC

For the Complainant: Mr. M. Wasim, ASC

For the State: Mr. Muhammad Jaffar, Additional
Prosecutor General Punjab
Ghulam Haider, I.O./ASI with record

Date of hearing: 06.03.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Hassan Javed, petitioner herein, anticipating arrest, seeks admission to bail; he has been accused by his employer Naseer Hussain for committing criminal breach of trust along with Abu Turab, Jarar Haider and Muhammad Atif in consequence whereof the company, styled as Dev Batch (Pvt.) suffered a loss of US \$50000. It is alleged that, alarmed by persisting loss, the Director of the company arranged audit of the accounts to discover that the accused were receiving payments by the customers in their personal accounts and that they also transacted payments from company's account for consignments personally settled with foreign customers. It is further alleged that when confronted with the foul play the accused confessed the guilt and paid back a sum of US \$6261 with an undertaking for the remainder, subsequently retracted, prompting recourse to law.

It is argued that the intended arrest is tainted with *mala fide* inasmuch as the process of law is being abused to convert a rendition issue into a criminal prosecution to cast its rigor upon the petitioner, vulnerably placed; there is nothing on the record to even obliquely

suggest breach of trust within the contemplation of section 405 of the Pakistan Penal Code, 1860, concluded the learned counsel.

2. Heard. Record perused.

3. Petitioner's employment with the complainant is a common ground, nonetheless, accusation notwithstanding, learned law officer assisted by learned counsel for the complainant has not been able to point out, even obliquely, any material/evidence to establish alleged transactions, each admittedly documented; there is no statement on the record to confirm confession by the accused, either individually or jointly. In addition to the crime report, the only statement is that of Bilal Ahmed PW, who referred to some "*voice messaging*" by the petitioner as proof of his guilt without production thereof before the Investigating Officer, foreclosing the possibility of its forensic confirmation. Not even the time or date of impugned transactions is mentioned in the crime report; investigation sans the details as well. Loss, allegedly incurred by the employees, cannot be equated with breach of trust. Prosecution has to structure itself upon foundations yet to be laid and this by itself brings petitioner's case within the remit of sub section 2 of Section 497 of the Code of Criminal Procedure, 1898, a coordinate requirement for the grant of relief, prayed for; the foregoing status of the case is confirmed by no other than the Investigating Officer himself *vide* case diary dated 8.1.2020. Even otherwise, argument that *mala fide* is lurking behind the intended arrest cannot be dismissed out of hand and as such given the petitioner's clean past, his remission into custody would be a measure far from being conscionable. A case for judicial protection stands made out. The petition is converted into appeal; allowed; the petitioner is admitted to anticipatory bail on furnishing bonds in the sum of Rs.1,00,000/- (one lac) with two sureties each in the like amount to the satisfaction of the trial Court. Above observations shall not cast their shadow on the outcome of the trial, to be essentially settled on the strength of available evidence.

Judge

Judge

Lahore, the
6th March, 2020
Not approved for reporting
Ghulam Raza/-