

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Faisal Arab

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.169 of 2020

*(Against judgment dated 13.2.2020 passed by the
High Court of Sindh, Karachi in Cr. Bail Application
No.1327 of 2019)*

Ghulam Farooq Channa

...Petitioner(s)

Versus

Special Judge ACE (Central-I) Karachi & another

...Respondent(s)

For the Petitioner(s):

Mr. Ghulam Sajjad Gopang, ASC
with petitioner

For the State:

N.R.

Date of hearing:

03.03.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Avoiding arrest since 28.8.2019, in the wake of dismissals, Ghulam Farooq Channa, Secretary Union Council Jamshed Town, Karachi seeks bail in anticipation thereto; he is accused of having fabricated a fake death certificate of one Naseem Begum Chotani, on the basis whereof, his co-accused attempted to hoodwink judicial process to grab valuable properties vesting in the lady. Upon disclosure, the scam was reported to the Anti-Corruption Authorities and pursuant to an inquiry, the petitioner has been arrayed as accused alongside the accomplices.

2. Learned counsel for the petitioner contends that alleged fabrication was reported after five years and in fact was committed by the officials at the higher rung and that the petitioner was being hounded as a scapegoat to save the real culprits; it is argued that the co-accused have since been enlarged on post arrest bail and, thus, petitioner's remission into custody is not likely to serve any useful purpose, relative to investigation.

3. Heard.

4. Grant of bail to an accused required in a cognizable and non-bail offence prior to his arrest is an extraordinary judicial intervention in an ongoing or imminent investigative process. It clogs the very mechanics of State authority to investigate and prosecute violations of law designated as crimes. To prevent arrest of an accused where it is so required by law is a measure with far reaching consequences that may include loss or disappearance of evidence. The Statute does not contemplate such a remedy and it was judicially advented way back in the year 1949 in the case of Hidayat Ullah Khan Vs. The Crown (PLD 1949 Lahore 21) with purposes sacrosanct and noble, essentially to provide judicial refuge to the innocent and the vulnerable from the rigors of abuse of process of law; to protect human dignity and honour from the humiliation of arrest intended for designs sinister and oblique. The remedy oriented in equity cannot be invoked in every run of the mill criminal case, *prima facie* supported by material and evidence, constituting a non-bailable/cognizable offence, warranting arrest, an inherent attribute of the dynamics of Criminal Justice System with a deterrent impact; it is certainly not a substitute for post arrest bail.

The petitioner was at the helm of affairs when the bogus certificate was issued; cognizance on belated disclosure does not mitigate the culpability nor can be equated with *mala fide*. Release of co-accused on post arrest bails is entirely beside the mark for the reasons stated above. View taken by the learned High Court of Sindh as well as the learned Special Judge (Central-I) Karachi is in accord with the law, being consistently followed by this Court till date. Petition fails. Leave declined.

Judge

Judge

Islamabad, the
3rd March, 2020
Not approved for reporting
Azmat/-