

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Sardar Tariq Masood

Mr. Justice Mazhar Alam Khan Miankheh

CRIMINAL PETITION NOS.1565 AND 1574 OF 2024

(On appeal against the orders dated 05.11.2024 & 01.11.2024 passed by the Islamabad High Court, Islamabad in CrI. Misc. No.1728-B/2024 and CrI. Misc. No.1636-B/2024, respectively)

Jabran (in CrI.P.1565/24) ... ... Petitioners

Muhammad Afnan Alam (in CrI.P.1574/24)

## VERSUS

The State thr. DG, FIA and others (in both cases) ... Respondents

For the Petitioners

(Crl.P.1565/24) : Mr. Saad Mumtaz Hashmi, ASC  
(Crl.P.1574/24) : Mr. Umair Majeed Malik, ASC  
Syed Rifaqat Hussain Shah, AOR  
(in both cases)

For the State : Raja Shafaqat Abbasi, DAG  
Mr. Arslan, Inspector (FIA)

Assisted by : Mr. Johar Imam, Law Clerk.  
Mr. Habib Khan, Law Clerk.

Date of Hearing : 18.02.2025

## JUDGEMENT

**Sardar Tariq Masood, J.** Through the impugned judgments dated 05.11.2024 and 01.11.2024, both the petitioners were declined post-arrest bail in common FIR No.02/2024 dated 19.08.2024, registered at Police Station FIA Anti-Money Laundering Circle, Islamabad, under sections 3 & 4 of the Anti-Money Laundering Act 2010 (as amended through Anti-Money Laundering (Amendment) Act No. XI of 2020 and Anti-Money Laundering (Second Amendment) Act No. XXX of 2020) (hereinafter called "**AMLA**"); hence, these petitions for leave to appeal.

2. Briefly stated facts of the case are that FIR No.02/2024, was lodged as an outcome of Enquiry No.25/2024 of FIA Anti-Money Laundering Circle, Islamabad which was initiated upon a complaint

received from FIA Corporate Crime Circle, Islamabad, as a result of predicate offences in case FIR No.03/2024 dated 15.01.2024, registered at FIA Corporate Crime Circle, Islamabad, under sections 420, 468, 471, 109 of the Pakistan Penal Code (hereinafter called **PPC**) read with section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter called **PCA**). It was alleged in FIR No.02/2024 that, during the investigation of FIR No.03/2024, it transpired that the petitioner/accused Muhammad Afnan Alam, who being Member (Estate) in Capital Development Authority (hereinafter called **CDA**) (from July 2021 till September 2023) was involved in corruption and corrupt practices through demand/acceptance of bribes in cash and kind, and had subsequently purchased three properties in his own name and in the name of his wife from the proceeds of crime generated from predicate offences as such three separate FIRs were lodged against him, namely, FIR No.03/2024, FIR No.05/2024 and FIR No.11/2024. The details of said properties, as given in FIR No.02/2024, are as follows:

Sr No.	Property Detail	Owner Details	Year of Acquisition
1	Plot No. 428-C, Sector C-14, Islamabad.	Sara Rasul Bangash w/o accused Muhammad Afnan Alam	2022
2	Office No. 102, First Floor, Aria Tower, (measuring 260 Sq.ft) FECHS, Sector E-11, Islamabad.	Sara Rasul Bangash w/o accused Muhammad Afnan Alam	2022
3	AYX-296 (Toyota Corolla)	Muhammad Afnan Alam	2022

3. Petitioner Jabran was also nominated in FIR No.02/2024, wherein it was alleged that he had facilitated the principal accused, i.e. Muhammad Afnan Alam, in the sale and purchase of Plot No.428-C, Sector C-14, Islamabad; hence, *prima facie*, he acted as a 'front-man' by aiding and abetting the laundering of proceeds of crime.

**Crl.P.1565/24**

4. Learned counsel for the petitioner Jabran contended that the petitioner is a property dealer who is nominated in case FIR No.02/2024 as a front-man of the principal accused and is charged under section 3(d) of the AMLA. Learned counsel submitted that section 3 of the AMLA does not fall in the prohibitory clause of section 497(1) of the Code of Criminal Procedure (**Cr.P.C.**), because, at bail stage the Court has to look at the minimum period of sentence provided for an offence. He has placed reliance on the cases reported as **Jamal-ud-Din v. State** (2012 SCMR 573) and **Khuda Bux v. State** (2010 SCMR 1160). Learned counsel further contended that the petitioner Jabran has not been nominated in FIR No.03/2024, rather only co-accused, namely, Muhammad Afnan Alam, was nominated in that FIR and he has been granted post-arrest bail by the Islamabad High Court vide order dated 15.03.2024. The petitioner Jabran has also not been nominated in other FIRs registered against the co-accused Muhammad Afnan Alam, namely, FIR No.05 and 11 of 2024. He also submitted that the petitioner is behind the bars for more than 6 months and challan has still not been submitted in the Court, which is a circumstance that entitles the petitioner to the post-arrest bail. Learned counsel, in this behalf, has placed reliance on the cases reported as **Gul Rehman v. State** (PLD 2021 SC 795) and **Hazrat Amin v. State** (2020 SCMR 418). Lastly, learned counsel contended that the petitioner's explanation for his role in the transfer of Plot No.428-C, Sector C-14, Islamabad has not been properly appreciated in the impugned judgement.

5. In order to address the learned counsel's contention that section 3 of the AMLA does not fall within the prohibitory clause of section 497(1) Cr.P.C., it is expedient to reproduce section 4 of the AMLA which prescribes the punishment for section 3, in the form of a range as under: -

**4. Punishment for money laundering—** (1) *Whoever commits the offence of money laundering shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend upto ten years and shall also be liable to fine which may extend upto twenty-five million*

*rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.*

*(2) The fine under sub-section (1) may extend upto one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).*

It was argued that when the punishment for an offence is prescribed in the form of a range, the minimum period of sentence in that range is to be considered at bail stage for determining whether the relevant offence falls under the prohibitory clause of section 497(1) Cr.P.C. or not. Learned counsel reasoned that, as section 4 of the AMLA prescribes a punishment that could range from a minimum period of 01 year to a maximum period of 10 years rigorous imprisonment; hence, the minimum period of sentence provided for section 3 of the AMLA is 01 year. Therefore, case of the petitioner does not fall under the prohibitory clause of section 497(1) Cr.P.C, as such he is entitled to grant of bail. In order to support his contention, learned counsel has relied upon a judgement of two-member bench of this Court reported as **Jamal-ud-Din** (*ibid*), wherein it was observed that:

*"4. Without entering into the merits of the case, as the quantum of sentence has to be commensurate with the quantum of substance recovered, we doubt the petitioner can be awarded maximum sentence provided by the Statute. Needless to say that the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case...."*

Learned counsel has also cited the case of **Khuda Bux** (*ibid*) wherein it has been held that:

*"5. ....The question of imposition of maximum sentence under the circumstances is to be determined during the trial...."*

6. We have gone through the referred judgements and have not been persuaded by the argument of the learned counsel that the minimum period of sentence is to be considered at bail stage for the purpose of section 497(1) Cr.P.C. Such interpretation is not supported by any law or subsequent jurisprudence established by this Court. At bail stage, the Court is not to undertake any speculative exercise or guess work regarding the probable length of sentence that will likely be awarded at the end of a trial. Doing so

would amount to a deeper appreciation of evidence, which is prohibited at bail stage. Additionally, any such attempted categorization of sentencing or speculation at bail stage could prejudice future proceedings by pre-empting the mind of the Trial Court. This legal position was clearly expounded by a three-member bench of this Court in case reported as **Socha Gul v. State** (2015 SCMR 1077), wherein this Court has departed from the case of **Jamal-ud-din** (*ibid*) in the following words:

*"3. ....In such circumstances, at this stage no case for grant of bail is made out, merely for the reason that in the case of Jamal-ud-Din (supra) the honourable two member Bench of this Court has admitted the accused to bail with the observation that, while hearing a petition for grant of bail, the Court is not to keep in view the maximum sentence provided by the statute for the charged offence, but the one which is likely to be entailed."*

The Court proceeded to observe that:

*"5. From the above reproduction, intent and scheme of the legislator is quite clear about the quantum of prescribed punishment under section 9(c) (ibid), which could be either death or imprisonment for life or an imprisonment for a term which may extend to fourteen years, in addition to fine up to one million rupees. In our opinion, in such circumstances, neither categorization of sentencing nor any guess work or speculative exercise could be undertaken by the Court at bail stage to enlarge an accused on bail in such crimes, which will amount to pre-empting the mind of the trial Court, controlling its powers in the matter of sentencing an accused and determining the quantum of sentence upon his conviction."*

7. The reasoning adopted in the case of **Socha Gul** (*ibid*) was further endorsed by another three-member bench of this Court in a case reported as **Anti-Narcotics Force through its Regional Director/Force Commander, A.N.F. Rawalpindi v. Qasim Ali** (2019 SCMR 1928). In this case, post-arrest bail was granted by the Islamabad High Court mainly on the ground that in view of the sentencing guidelines issued in the case of **Ghulam Murtaza v. State** (PLD 2009 Lahore 362), the accused was not likely to be punished for a period of imprisonment attracting the prohibitory clause of section 497 (1) Cr.P.C. While addressing other key aspects of the case, this Court remanded the case back to the High Court for deciding the matter on merits and proceeded to record the following observations regarding such grant of bail:

*"3. ....We, however, have not been able to find the said grounds weighing with the High Court to be valid or sufficient for the purpose of admitting the respondent to post-arrest bail in the present case because all the said considerations were in derogation of the law. It has already been clarified by this Court in the case of Socha Gul v. The State (2015 SCMR 1077) that the sentencing guidelines issued by the Lahore High Court, Lahore in the above-mentioned case of Ghulam Murtaza are not relevant at the stage of bail or during the trial....."*

8. It is also observed that such interpretation is not supported by the language of section 497 Cr.P.C. This aspect has been discussed in detail in the case reported as **Majid Ali v. State** (2022 P Cr. L J 981 Islamabad), wherein the learned High Court recorded the following observations:

*"6. A plain reading of section 497 of Cr.P.C. suggests that it is the maximum sentence prescribed that is to be considered in relation to an offence for purposes of determining whether or not such offence falls within the prohibitory clause. Section 497(1) and the second proviso of such section, which are relevant for our present purposes, state the following:*

**497. When bail may be taken in case of non-bailable offence:** (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

*Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released:*

*The first part of section 497(1) is permissive and allows a person arrested to be released on bail who is accused of a non-bailable offence. The second part of section 497(1) contains a prohibition against the release of a person arrested for being accused of a non-bailable offence, and has come to be recognized as the prohibitory part of section 497 (i.e. the prohibitory clause). The prohibition is applicable in relation to a person who has been arrested after being accused of a non-bailable offence "punishable" with death or imprisonment for life or imprisonment for ten years. The operative word here is "punishable".*

7. The word "punishable" has been defined by Black's Law Dictionary to mean "subject to a punishment" when used in relation to a person. The ordinary dictionary meaning of the

*word "punishable" therefore clarifies that in the event that an offence that a person has been charged with could possibly result in the punishment of ten years in prison such offence would fall within the prohibitory clause. Thus, any offence in relation to which punishment has been prescribed in the form of a range and it has been left to the court to determine the sentence in view of the facts of the case, but the maximum punishment that could possibly be awarded for such offence is ten years, would fall within the prohibitory part of section 497(1) of Cr.P.C. Simply put, it is the maximum punishment and not the minimum prescribed in relation to an offence under P.P.C. that determines whether or not the accused is "punishable" for ten years and whether the offence in question falls within the prohibitory clause or not. At bail stage it is not for the court to try and predict the possible sentence that would be imposed on a person under arrest for being an accused of a non-bailable offence."*

9. We are inclined to agree with the view taken by the Islamabad High Court in the above cited judgement, therefore, it is quite clear that at bail stage, the maximum period of sentence prescribed for an offence is to be considered for determining whether the offence falls under the prohibitory clause of section 497(1) of the Cr.P.C.

10. As far as the counsel's reliance on the case of **Khuda Bux** (*ibid*) is concerned, in that case this Court held that the question of imposition of maximum sentence under the circumstances is to be determined during the trial. We are of the opinion that the referred judgement does not strengthen the argument of the counsel but rather negates it, because as iterated above, it is the prerogative of the Trial Court to determine the length of sentence to be awarded and as such, no prediction or speculation regarding the same can be made at the bail stage after a tentative assessment. Therefore, at bail stage Courts are not to consider minimum period of sentence but rather maximum period of sentence to determine application of prohibitory clause of section 497(1) Cr.P.C. Upshot of the above discussion is that section 3 of the AMLA falls within the prohibitory clause of section 497(1) Cr.P.C, thereby compelling us to turn to the merits of the petitions before us.

11. Coming to the other contentions raised by the learned counsel, it is evident from the record that the petitioner is not nominated in FIR No.03/2024, FIR No.05/2024 or FIR No.11/2024 and only the co-accused, namely Muhammad Afnan Alam, is

nominated in those FIRs. These are the FIRs, registered against the predicate offences from which proceeds of crime were allegedly generated to purchase the three properties mentioned in FIR No.02/2024. Additionally, the role attributed to petitioner in FIR No.02/2024 is one of abetment only and he is behind the bars for the last six months while challan is yet to be submitted and lastly, following observation has been made in the impugned order:

*"7. As such the petitioner Jabran is unable to explain those circumstances in which he had issued cheque amounting to Rs 3.5 Million for payment of sale consideration against the plot No.428-C, Sector C-14, Islamabad which was transferred in the name of Sara Rasul Bangash w/o Afnan Alam/principal accused ...."*

The learned counsel has appended documentary evidence which, *prima facie* suggests, that as a property dealer, the petitioner's role was limited to brokering the sale transaction of the plot between the original allottees, one of whom was his maternal uncle, and Sara Rasul Bangash, wife of co-accused Muhammad Afnan Alam. The cheque for Rs.3.5 million, and pay order, subsequently made on the basis of that cheque, was given by the petitioner to the sellers as a security and was never encashed, rather the same was returned to petitioner upon completion of the sale transaction, after which the pay order was cancelled and deposited back into the account of petitioner Jabran. The cheque, pay order, deposit slip and bank statement of the petitioner are appended. Therefore, at this stage there is no evidence on record that the petitioner actually paid the consideration amount to the sellers for the plot purchased by the wife of principal accused and the same will be appreciated by the Trial Court after reading the evidence. All other properties of the petitioner mentioned in the impugned order are not part of FIR No.02/2024 and are declared in the appended tax returns of the petitioner, which give rise to the presumption that the same have been legally acquired through declared sources. Whether these properties are actually connected to any illegal activity will ultimately be determined by the Trial Court. Furthermore, the prosecution case is based upon documentary evidence only which is



already available with FIA authorities and there is no apprehension of tampering with the same if the petitioner is admitted to bail.

#### **Crl.P.1574/24**

12. Prior to the registration of case FIR No.02/2024 the petitioner, Muhammad Afnan Alam, was nominated in case FIR No.03/2024 dated 15.01.2024 under sections 420, 468, 471 and 109 PPC read with section 5(2) of the PCA and FIR No.05/2024 dated 16.01.2024 under sections 419, 420, 468, 471 and 109 read with section 5(2) of the PCA. The petitioner was granted post-arrest bail by the Islamabad High Court in FIR No.03/2024 and FIR No.05/2024 vide orders dated 15.03.2024 and 18.03.2024, respectively. After being released, the petitioner was again nominated in FIR No.11/2024 dated 24.04.2024 u/s 409, 420, 468, 471 and 109 PPC read with section 5(2) of the PCA. He was enjoying *ad-interim* pre-arrest bail in case FIR No.11/2024 when he was summoned by the Investigating Officer for 19.08.2024. Upon appearing before the Investigating Officer on 19.08.2024, the petitioner was provided a copy of FIR No.02/2024 and was arrested in the same. Later on, the petitioner was granted post-arrest bail by the Islamabad High Court in case FIR No.11/2024, vide order dated 01.11.2024.

13. Learned counsel contended that the precise allegation in FIR No.02/2024 is that the petitioner purchased properties, as already mentioned above in para No.2, through proceeds of crime generated from predicate offences of FIR No.03/2024, FIR No.05/2024 and FIR No.11/2024 wherein it was alleged that the petitioner has made illegal and unlawful allotments, but he has been granted bail in FIR No.03/2024. He also contended that the interim challan submitted in case FIR No.03/2024 does not entail any allegation that the petitioner received any kickback or proceeds of crime. He further submitted that the properties mentioned in case FIR No.02/2024 have no nexus with the predicate offences of case FIR No.03/2024. Lastly, he pointed out that the impugned judgment incorrectly stated that sale consideration for two of the properties were paid by one Muhammad Umer Kiani.

14. Learned counsel has brought our attention to the following observations recorded by the Islamabad High Court in Crl. Misc No. 402-B/2024 and Crl. Misc. No.385-B/2024 whereby post-arrest bail was granted to the petitioner vide common order dated 15.03.2024 in case FIR No.03/2024:

*"17. .... there is not a single evidence available to confirm that both these petitioner officers namely Muhammad Afnan Alam and Sidra Anwar have any contact with the legal heirs or received any benefit in this regard.*

*18.*

*.....*  
*19. Keeping in view the above position, it is obligatory upon the prosecution to demonstrate cheating, making a false document, forgery for purpose of cheating, using as genuine a forged document which are key ingredients of Sections 419, 420, 468, 471 PPC and when those elements were missing, prima facie no offence is made out against the petitioners, nor it is the case of prosecution that any forged document was prepared by the petitioners....."*

15. It is the case of prosecution that the properties mentioned in case FIR No.02/2024 were purchased by using proceeds of crimes generated through predicate offences against which FIR No.03/2024, FIR No.05/2024 and FIR No.11/2024 were registered, however, the petitioner has been granted bail in all three FIRs. As per Section 2(xxiii) of the AMLA, proceeds of crime means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence. As the petitioner has been granted bail in all the FIRs regarding the predicate offences from which the alleged proceeds of crime have been generated, the case against the petitioner becomes one of further inquiry falling under sub-section (2) of section 497 of the Cr.P.C.

16. We have also observed that out of the three properties mentioned in case FIR No.02/2024, (1) Plot No. 428-C, Sector C-14, Islamabad was transferred on 18.04.2022, (2) Office No.102, First Floor, Aria Tower, (measuring 260 Sq.ft) FECHS, Sector E-11, Islamabad was transferred on 17.02.2022 and (3) AYX-296 (Toyota Corolla) was purchased on 19.04.2022. According to the interim challan submitted in FIR No.03/2024, the first CDA application, regarding which the offences of FIR No.03/2024 were alleged against

the petitioner, is dated 31.08.2022, and the approval in this matter was given by petitioner in February/March 2023, therefore, it appears from the available record that the three properties in question were purchased by the petitioner prior to the allotment process in which the predicate crimes were allegedly committed by the petitioner.

17. Furthermore, in the impugned judgment it is incorrectly noted that sale consideration for two properties i.e. Office No.102, First Floor Aria Tower and Toyota Corolla AYX-296, were given by one *"Muhammad Umer Kiani, who is also accused in this case"*. Muhammad Umer Kiani is not an accused in FIR No.02/2024 and the petitioner has contended that he himself has paid sale consideration for Office No.102, First Floor Aria Tower in cash. The petitioner has appended his Asset Declarations for the years 2018 to 2021 to demonstrate availability of funds. Similarly, the appended documents also indicate that sale consideration for Toyota Corolla AYX-296 was paid by the petitioner himself through banking channels, as said transactions are reflected in his bank statements, which have been attached.

18. In the light of these circumstances, we are of the considered view that the case of both the petitioners falls within the ambit of further inquiry under Section 497(2) of the Cr.P.C and they are entitled to the grant of post-arrest bail. The observations made above are tentative in nature which shall not prejudice the case of either party before Trial Court.

19. Foregoing are the reasons for our short order dated 18.02.2025 which is reproduced hereunder:

*"For reasons to be recorded later, these two petitions are converted into appeal and allowed. The appellants Jabran and Muhammad Afnan Alam are released on bail in case FIR No.2/2024 dated 19.08.2024, registered at Police Station FIA Anti-Money Laundering Circle, Islamabad, under sections 3 & 4 of the Anti-Money Laundering Act 2010 (Amended September 2020), subject to their furnishing bail bonds of Rs.10,00,000/-*

*(rupees one million only) with two sureties in the like amount each, to the satisfaction of the trial Court, concerned."*

Judge

Judge

Islamabad  
21.03.2025

NOT APPROVED FOR REPORTING.

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

**PRESENT:**  
Mr. Justice Sardar Tariq Masood  
Mr. Justice Mazhar Alam Khan Miankhel

**CRIMINAL PETITION NOS.1565 AND 1574 OF 2024**  
(On appeal against the orders dated 05.11.2024 & 01.11.2024 passed by the Islamabad High Court, Islamabad in Crl. Misc. No.1728-B/2024 and Crl. Misc. No.1636-B/2024, respectively)

Jabran (Crl.P.1565/24) ... .. Petitioners  
Muhammad Afnan Alam (Crl.P.1574/24)

**VERSUS**

The State thr. DG, FIA and others (in both cases) ... .. Respondents

For the Petitioners

(Crl.P.1565/24) : Mr. Saad Mumtaz Hashmi, ASC  
(Crl.P.1574/24) : Mr. Umair Majeed Malik, ASC  
Syed Rifaqat Hussain Shah, AOR  
(in both cases)

For the State : Raja Shafqat Abbasi, DAG  
Mr. Arslan, Inspector (FIA)

Date of Hearing : 18.02.2025

**ORDER**

**Sardar Tariq Masood, J.** For reasons to be recorded later, these two petitions are converted into appeal and allowed. The appellants Jabran and Muhammad Afnan Alam are released on bail in case FIR No.2/2024 dated 19.08.2024, registered at Police Station FIA Anti-Money Laundering Circle, Islamabad, under sections 3 & 4 of the Anti-Money Laundering Act 2010 (Amended September 2020), subject to their furnishing bail bonds of Rs.10,00,000/- (rupees one million only) with two sureties in the like amount each, to the satisfaction of the trial Court, concerned.

Judge

Judge

Islamabad  
18.02.2025  
*M. Saad*

