

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NOS. 1086-L & 1143-L OF 2022

(On appeal against the order dated 22.06.2022 passed by the Lahore High Court, Lahore in CrI. Misc. Nos. 29415/B & 81584/B of 2022)

Naeem Qadir Sheikh

(In Cr.P. 1086-L/2022)

Muhammad Zaigham Ali

(In Cr.P. 1143-L/2022)

... Petitioners

VERSUS

The State etc

(In both cases)

... Respondents

For the Petitioners:

Mr. Aftab Ahmad Bajwa, ASC a/w petitioner
(In Cr.P. 1086-L/2022)

Mian Muhammad Rauf, ASC a/w petitioner
(In Cr.P. 1143-L/2022)

For the State:

Mr. Khurram Khan, Addl. P.G

Mr. Abdul Majeed, Deputy Director, Anti
Corruption

Date of Hearing:

30.09.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- This order shall dispose of the above titled Criminal Petitions as they are directed against the same consolidated order.

2. Through the instant petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have assailed the order dated 22.06.2022 passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 46/2020 dated 26.12.2020 under Sections 409/420/467/468/471/201 PPC read with Section 5(2) of the Prevention of Corruption Act, 1947, at Police Station ACE/HQ Region-A, Lahore, in the interest of safe administration of criminal justice.

3. Briefly stated the prosecution story as narrated in the crime report is that pursuant to a letter received from Director Excise & Taxation, Region-C Lahore, it transpired that scanned record of 4397 vehicles was missing and not available. Allegedly this record was either misappropriated/embezzled or was not scanned to conceal the bogus registration of commercial vehicles by the petitioners and the co-accused, being officials of the Excise and Taxation Department. Hence, the instant case.

4. At the very outset, learned counsel for the petitioners contended that the petitioners have been falsely roped in this case against the actual facts and circumstances. It is contended that allegation of corruption, misconduct and misappropriation has not been attributed to the petitioners, as such, offences mentioned in the FIR do not attract in the present case. It is argued that the scam of bogus registration pertains to year 2015-2018 whereas petitioner Naeem Qadir Sheikh was posted as ETO in the year 2019. Further contended that petitioner Naeem Qadir Sheikh processed printing of 80 registration certificates and the scanned record of all these vehicles is available. Contends that neither there was any beneficiary of the alleged transaction nor is there any allegation that the petitioners have ever received any monetary advantage. Contends that one of the petitioners being low grade employee has been made scapegoat whereas the senior officers have been exonerated. Lastly it has been contended that co-accused of the petitioners have been granted bail by the court of competent jurisdiction, therefore, following the rule of consistency, the petitioners also deserve the same treatment to be meted out.

5. On the other hand, learned Law Officer has though defended the impugned order but admitted that there is no material against the petitioners available on the record. It has been contended that the petitioners' co-accused in connivance with each other have actively participated in bogus registration of a large number of vehicles, therefore, they being co-employee do not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the available record.

Perusal of the record reveals that a scam regarding bogus registration of 4397 vehicles was surfaced from the office of Excise & Taxation, Region-C, Lahore. The petitioner Naeem Qadir Sheikh was posted as Excise & Taxation Officer (ETO) in the year 2019 whereas the petitioner Muhammad Zaigham Ali was posted as Data Entry Operator. During the tenure of petitioner Naeem Qadir Sheikh, he approved printing of 80 registration certificates out of which 14 were found to be bogus, hence, their documents were cancelled whereas 27 were found to be in accordance with law while 39 are still in process of investigation. It is the case of petitioner Naeem Qadir Sheikh that he approved printing of registration certificates of the vehicles, whose verification, registration fee and token tax had already been deposited before his posting. According to him, the scanning record of all these 80 files is available and was also provided to the Investigating Officer. It is an admitted fact that he was posted as ETO in the year 2019 whereas the scam of bogus registration pertains to 2015-2018. The Investigating Officer, present in Court, stated before this Court that uptill now the petitioner has no nexus with the scam, which is under investigation. As far as the case of petitioner Muhammad Zaigham Ali is concerned, it is his case that he was merely a Data Entry Operator, who was entrusted with the job of punching the data in system. It is the case of the petitioners that as per SOPs, the basic duty to (i) examine the documents and verify the particulars of the vehicles entered in the system with the original file, (ii) physical examination of the vehicle, and (iii) submission of the file after complete satisfaction of the papers of the motor vehicle was of the Inspector and not the petitioner. We have been informed that the all the officers, who were nominated in the crime report, have been exonerated. This fact *prima facie* fortifies the stance of the petitioners that they have been made scapegoat. The co-accused of the petitioners namely Adeel Amjad, who has been ascribed a similar role has been granted post arrest bail by the learned Trial Court. The department filed petition before the High Court seeking cancellation of bail but the same was dismissed vide order dated 19.01.2022. The said order has not been challenged before this Court meaning thereby that it has attained finality. In such like situation, when it is admitted fact that the role ascribed to the petitioners cannot be distinguished from the co-accused who has been granted post-arrest bail by the court of

competent jurisdiction which remains unchallenged, any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioners because of the reason that soon after their arrest they would become entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The State through Prosecutor General of Punjab and another (2022 SCMR 1424). It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). In these circumstances, it is the Trial Court who after recording of evidence would decide about the guilt or otherwise of the petitioners and no useful purpose would be served by sending the petitioners behind the bars for an indefinite period. *Prima facie* there are sufficient grounds to take into consideration that the case of the petitioners is fully covered by Section 497(2) Cr.P.C. calling for further inquiry into their guilt.

7. For what has been discussed above, we convert these petitions into appeals, allow them and set aside the impugned order dated 22.06.2022 to the extent of the petitioners. The petitioners are admitted to bail subject to their furnishing bail bonds in the sum of Rs.200,000/- each with one surety each in the like amount to the satisfaction of learned Trial Court.

CHIEF JUSTICE

JUDGE

Lahore, the
30th of September, 2022
Approved For Reporting
Khurram