IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CRIMINAL PETITION NO.1251 OF 2022

(Against the order dated 29.08.2022 passed by Islamabad High Court, Islamabad in Crl. Misc. No.1013-B-2022)

Javed Iqbal *...Petitioner*

Versus

The State through D.A.G., Islamabad & another *...Respondents*

For the petitioner	:	Mr. Adil Aziz Qazi, ASC. Sheikh Mehmood Ahmed, ASC.
For the respondents	:	Raja Shafqat Abbasi, Deputy Attorney General Pakistan. Faisal, I.O FIA. *(for the State)*
Date of Hearing:		01.11.2022

JUDGMENT

SARDAR TARIQ MASOOD, J: Petitioner, Javed Iqbal was arrested in case FIR No.27/19 dated 19.09.2019 for the offences under sections 13/14 of the Prevention of Electronic Crimes Act, 2016 (**PECA, 2016**) read with sections 420, 468, 471 and 109 of the Pakistan Penal Code, 1860 (**PPC**) registered at Police Station F.I.A, Cyber Crime Reporting Centre, Islamabad. He approached the Special Court established under the PECA, 2016, for his release on bail but his application was dismissed vide order dated 07.07.2022 by the Judge, Prevention of Electronic Crime Court, Islamabad. He approached the High Court through Criminal Misc. No.1013-B of 2022 for grant of post-arrest bail, which vide impugned order dated 29.08.2022 was allowed, subject to his furnishing of bail bonds in the sum of Rs.500,000/- with one surety in the like amount to the satisfaction of the trial Court. The petitioner was, however, further directed to deposit Rs.3.5 million in the trial Court. Although the petitioner has been granted bail but due to the condition of depositing of Rs.3.5 million in the

trial Court, he is still lying in the jail; hence, this petition for leave to appeal.

2. Learned counsel for the petitioner contends that the petitioner is aggrieved of the impugned order for the reason that despite grant of bail by the High Court the petitioner is still lying in the jail because while granting bail to him, the High Court not only asked him to furnish bail bonds in the sum of Rs.500,000/- with one surety but also directed him to deposit Rs.3.5 million in the trial Court, which according to learned counsel is not permissible under the law. Further contends that the High Court assumed that the amount of Rs.3.5 million is admitted by the petitioner but the fact of the matter is that the said amount is denied by the petitioner, and that the High Court has itself observed in the impugned order that all other questions could only be resolved during the course of trial but illegally imposed the condition of deposit of Rs.3.5 million. In this regard the learned counsel relied upon various judgments of this Court.

3. On the other hand, learned DAG contends that although this is a legal position that no such condition can be imposed by the Court while granting bail but according to him, the petitioner has admitted his liability, therefore, such a direction was not illegal.

4. Heard the learned counsel for the petitioner, learned Deputy Attorney General and perused the record with their able assistance. The only question for consideration before us is as to whether the Court while granting bail to an accused can impose any other condition or not. In case the Court considers it expedient to release an accused on bail during pendency of trial, it can certainly require him to execute a bond, either personally or through sureties, setting an amount therein having regard to the facts and circumstances of each case.

In order to ensure future attendance, the accused is required to submit bail bond under section 499 of the Code of Criminal Procedure, 1898 (**the Code**) and while asking the accused to submit sureties, the Court is not required to impose any condition upon the accused for further depositing of money. In case of default or non-appearance in Court, the Court may proceed to forfeit such bail bond under section 514 of the Code.

When the Court comes to a conclusion that an accused is entitled to be released on bail then of course such bail granting order cannot be subjected to riders and conditions. While admitting to an accused person on bail, actually he is released from the custody of the authorized officer/judicial lockup of the Court and his custody is entrusted to a person known as his surety, who is bound to produce him in Court at a specific

time and place to answer the charge against him. Even no condition can be imposed upon an accused person in order to desist him from the repetition of the offence. This Court, since the year 1963 till date, has dis-approved the imposition of any condition while granting bail to an accused person as section 499 of the Code, under which bail bonds are submitted in the Court, is very much clear that bail bonds are sufficient for release of a person/accused. In this regard reliance may be placed on the case of ***Mian Mahmud Ali Qasuri and others v. The State*** (PLD 1963 SC 478), wherein the question for consideration before this Court was whether a Criminal Court while granting bail could incorporation in the bail bond a condition other than any of the conditions mentioned in section 499 of the Code. This Court after relying upon "*Concise Law Dictionary*" observed that 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. The Court also considered the provisions of Sections 497, 499 and 500 of the Code and observed that under Section 497 *ibid*, an accused of a non-bailable offence can also be released on bail or on execution of a bond for his presence. As per Section 500 *ibid*, as soon as the bond has been executed, the accused shall be released. It was finally held that it seems fairly clear on the language employed by Section 499 *ibid* that such a condition cannot be incorporated in a bail or surety bond itself.

In the case of ***Faizur Rahman Sarkar v. The State and 2 others*** (1970 SCMR 175), it was reiterated that a person admitted to bail cannot be subjected to the condition that he shall desist from the repetition of the offence with which he is charged. It was further held that when bail was granted to the accused not as a mean of enforcing recovery of fine, but on its own merits, then that order could not be made dependent on the payment of fine.

In the case of ***Mst. Afshan Bibi v. The State*** (1998 SCMR 6), where the State counsel could not point out any case-law to show that the High Court is authorized to impose condition on the release of the accused on bail, this Court observed that it is well-settled that the accused person can be released on bail on the strength of surety to be provided by him.

In the case of ***Saeed Zaman v. The State and another*** (2020 SCMR 1855) it was held that law on the grant or refusal of bail in criminal cases is well settled, in that, the regime is an interlocutory arrangement to ensure physical presence of an accused so as to confront

the indictment pending conclusion of the trial, either under judicial custody or with a surety to produce him before the Court as and when required. In the event of his release on bail, the Court may require an accused to execute a bond either personally or through sureties, amount whereof shall be fixed with due regard to the circumstances of the case, and shall not be excessive. In case the Court consider it expedient to release an accused on bail pending conclusion of his trial, it can certainly require him to execute a bond either personally or through sureties, setting conscionable amounts therein, having regard to the facts and circumstances of each case with a view to ensure future attendance and may proceed to forfeit such bond in the event of default/non-compliance as contemplated by section 514 of the Code.

In the case of ***Jehanzeb Khan v. The State through A.G. Khyber Pakhtunkhwa and others*** (2020 SCMR 1268) it was held that the Court may decline the request for bail, considering the facts and circumstances of each case, even in cases falling outside the ambit of prohibition, however, the corporal coercion cannot be allowed to extract swift settlements or concessions in lieu of a promised freedom. Grant of bail cannot be subjected to riders and conditions, if otherwise, a case stands made out. In criminal dispensation of justice, the Court being an independent adjudicator at all stages must religiously maintain its neutrality without having any responsibility to the either side.

In the case of ***Maqbool Ahmed Mahessar and others v. National Accountability Bureau (NAB) through Chairman and others*** (2021 SCMR 1166) where the accused were admitted to pre-arrest bails in different NAB references with a direction to furnish deposits equivalent to the amounts allegedly embezzled by them, this Court held that such a direction for release of an accused on bail has been held by this Court as ultra vires in many judgments. An accused seeking bail desires transfer of his custody from Superintendent of the Jail, where he is confined, to his surety who undertakes his production as and when required by the Court and for that he has to make out a case in accordance with the law applicable thereto; he cannot be allowed or required to barter his freedom.

5. The crux of the above case-law is that:

(a) in terms of section 499 of the Code the Court cannot require an undertaking from an accused person before granting bail to desist from the repetition of the offence with which he is charged, as a condition precedent to the grant of bail; such a

condition cannot be incorporated in a bail or surety bond itself;

(b) when bail is granted to an accused not as a mean of enforcing recovery of fine, but on its own merits, the same could not be made dependent on the payment of fine; any such condition would amount to curtail his liberty, for which he otherwise is entitled;

(c) grant of bail cannot be subjected to riders and conditions, if otherwise, a case stands made out; and

(d) an accused seeking bail, after submitting bail bond through sureties, desire transfer of his custody to his sureties who undertake his production as and when required by the Court and for that he has to make out a case in accordance with the law applicable thereto; he cannot be allowed or required to barter his freedom, and imposing any condition other than submission of sureties would be against the dictum laid down by this Court.

Thus, the contention of learned DAG and the approach of the learned High Court is not in accordance with the dictum laid down by this Court, referred above.

6. In view of the above, the High Court wrongly and without any legal backing had imposed the condition of depositing of Rs.3.5 million besides the surety bonds, thus, while converting this petition into an appeal, the same is allowed. Consequently, the condition imposed by the High Court of depositing of Rs.3.5 million in the trial Court is set-aside and the order of granting post-arrest bail to the appellant, subject to his furnishing bail bonds of Rs.500,000/- (Rupees five hundred thousand) with one surety is maintained.

JUDGE

JUDGE

Islamabad, the
01.11.2022
*M.Saeed/***

JUDGE

APPROVED FOR REPORTING.

JUDGE

APPROVED FOR REPORTING