

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.594 of 2020

(Against the judgment dated 15.5.2020 passed by the Peshawar High Court Peshawar in Crl. M./BA No.1227-P/2020)

Jehanzab Khan

...Petitioner(s)

Versus

The State through A.G. KPK & others

...Respondent(s)

For the Petitioner(s): Syed Iqbal Hassan Shah Gillani, ASC
with Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Arshad Hussain Yousafzai, ASC
with Momin, I.O.

For the Complainant: Mr. Gohar Ali Khan, ASC
along with complainant.

Date of hearing: 09.07.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Jahanzeb Khan, petitioner herein, seeks admission to post arrest bail; he had allegedly issued two bank cheques to Masood-ur-Rehman complainant in the sums of Rs.20,00,000/- and Rs.97,00,000/-, respectively, bounced upon presentation; after arrest, he was released on bail by a learned Magistrate vide order dated 27.12.2019 on the basis of an *Iqarnama*, purporting clearance of substantial portion of the default; the complainant disputed genuineness of the instrument, in view whereof, a learned Additional Sessions Judge cancelled the bail vide order dated 27.2.2020; motion to secure bail failed in the High Court vide order dated 15.5.2020, *vires* whereof, are being assailed herein.

2. Heard.

3. It would be inexpedient to attend factual divergence over the impugned arrangement that appears to have paved petitioner's way for his release on bail at the magisterial forum through a negotiated settlement though retracted subsequently, a circumstance resulting into cancellation

thereof; it appears to have weighed with the High Court to decline the request as well.

Judicial discretion in bail matters is by now clearly contoured. Having regards to the facts and circumstances of each case, the Court may decline the request even in cases falling outside the remit of prohibition, however, exercise of judicial authority cannot be abandoned to relegate in subservience to the arrangements *inter se* the parties for the disposal of bail petitions nor the corporal coercion can 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; it is more important in cases involving recoveries and retrievals for the complainant, designed to be effected through plenary modes and procedures other than criminal prosecution. Deviation off the beaten path would throw normal statutory arrangements to the wind, therefore, petitioner's release and his subsequent arrest on the basis of an abortive/disputed arrangement fail to commend our approval.

4. Adverting to the petitioner's case, though there is a reference to issuance of bank cheques and their failure on the bank counter, nonetheless, details of financial obligation in satisfaction whereof the instruments were purportedly issued is conspicuously missing in the crime report. Substantial amounts notwithstanding, nonetheless, offence complained is punishable with three years imprisonment or fine or with both and as such does not attract the statutory bar. Petitioner's continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars as a strategy for punishment. A case for petitioner's release on bail stands made out. Criminal petition is converted into appeal and allowed; the petitioner shall be released on furnishing bonds in the sum of rupees one million with two sureties each in the like amount to the satisfaction of the learned trial Court/duty Magistrate.

Judge

Judge

Islamabad, the

9th July, 2020

Not approved for reporting

Azmat/-