

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 287 OF 2022

(On appeal against the order dated 22.02.2022 passed by the Lahore High Court, Rawalpindi Bench in Crl. Misc. No. 322-B/2022)

Malik Muhammad Tahir

... Petitioner

VERSUS

The State and another

... Respondents

For the Petitioner: Mr. Talat Mehmood Zaidi, ASC

For the Respondent (2): Malik Jawwad Khalid, ASC

For the State: Mr. Muhammad Jaffer, Addl. P.G. Punjab
Ms. Kainat Azhar, ASP
Mr. Muhammad Asif, I.O.

Date of Hearing: 22.09.2022

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 22.02.2022 passed by the learned Single Judge of the Lahore High Court, Rawalpindi Bench with a prayer to grant post-arrest bail in case registered vide FIR No. 1314 dated 03.09.2021 under Sections 420/468/471/406/489-F PPC at Police Station Airport, Rawalpindi, in the interest of safe administration of criminal justice.

2. The prosecution story as unveiled in the crime report is that the complainant, an overseas Pakistani, wanted to purchase agricultural land. The petitioner offered him his land and ultimately an agreement to sell was executed between the parties. The complainant paid an amount of Rs. 4.40 million through cheque and bank draft to the petitioner. The remaining price of the land was to be paid through two residential and one commercial plot situated in Behria Enclave, Islamabad, which were in the name of the complainant. The complainant got transferred both the residential plots in the name of the persons suggested by the petitioner. At the time of the said transfer, the petitioner presented title documents of the agricultural land but

eventually took them back. After the complainant got transferred his plots, the petitioner started using delaying tactics and did not transfer the land in the name of the complainant. Subsequently, it was disclosed that the agricultural land is not in the name of the petitioner. The cheque amounting to Rs.2.60 million issued by the petitioner towards transfer fee was also dishonoured due to insufficient funds.

3. At the very outset, it has been contended by the learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the whole prosecution case is based on surmises and conjectures. Contends that the offence does not fall within the prohibitory clause, therefore, the petitioner is entitled for the concession of bail. Contends that the impugned order is based on misreading and non-reading of evidence and the learned High Court misinterpreted the law on the subject. Lastly contends that the accusation against the petitioner requires further probe, as such, the case against him squarely falls within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant has defended the impugned order declining bail to the petitioner. It has been contended that the petitioner has deprived the complainant not only of huge amount but also of two valuable residential plots, therefore, he does not deserve any leniency from this Court.

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

Precisely stated the allegation against the petitioner is that he entered into an agreement to sell his immovable agricultural land with the complainant. The complainant not only paid an amount of Rs.4.40 million to him but as per the agreed terms, he got transferred two residential plots situated in Behria Enclave, Islamabad, in the name of the persons suggested by the petitioner. However, the petitioner did not mutate the land in favour of the complainant on account of deficiency in title and issued him a cheque amounting to Rs.2.60 million towards transfer fee but the same could not be

encashed and got dishonoured. It has come on the record that during investigation, it was found that the petitioner did not have any land, which could be transferred in the name of the complainant. It also transpired that the petitioner sold two residential plots of the complainant to Masood and Junaid and received the sale consideration. The evidence also reflects that the amount of Rs.4.40 million was received by the petitioner in his bank account. On the previous dates of hearing, the petitioner showed his willingness to refund the money that he owes to the complainant. Learned counsel for the petitioner was directed to seek instructions of the petitioner as to how and when he would refund the money. Ms. Kainat Azhar, ASP, was also directed to facilitate the settlement. We have been informed that although the petitioner had promised that as a part payment he would return Rs.2.0/- million to the complainant but now he is not inclined to return back the money to the complainant. Although the offences under Section 406/468/489-F PPC do not fall within the prohibitory clause of Section 497 Cr.P.C but this principle is not absolute, rather it depends upon the facts and circumstances of each case. Admittedly the complainant is an overseas Pakistani national, who has been deprived of his wealth, hence, it casts a heavy duty upon the courts to provide him safeguard within the limits of law. There is sufficient material oral & documentary available on the record to establish that the case of the petitioner does not fall within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt. The learned High Court has passed a well reasoned order to which no exception can be taken.

6. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the
22nd of September, 2022
Approved For Reporting
Khurram