

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

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

**Criminal Petition Nos.654 of 2020**

*(Against the order dated 1.6.2020 passed by the  
Islamabad High Court Islamabad in C.M. No.137/2020 in  
Crl. Misc. No.689-B/2020)*

***Saeed Zaman***

....Petitioner(s)

**Versus**

***The State & another***

....Respondent(s)

For the Petitioner(s): Mr. Riffat Saghiry Kureshy, ASC

For the Respondent(s): Mr. Sajid Ilyas Bhatti  
Addl. Attorney General along with  
Qaiser Masood, Ad. Dir. (L)  
Fazal Mabood, I.O.  
Mr. Qaisar Imam Ch. AD (L)

Date of hearing: 07.08.2020.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Saeed Zaman, petitioner, is amongst the array of accused, allegedly involved in a massive financial scam wherein, after his arrest, he attempted for bail; in the wake of dismissal of his motion in the Court of Session, he moved the Islamabad High Court for bail vide Crl. Misc. No.682-B of 2019, however, it was dismissed withdrawn on 12.11.2019. Undeterred by his previous failure, the petitioner once again moved the High Court through Crl. Misc. No. 689-B of 2020 when a learned Judge-in-Chamber vide order dated 20.5.2020, earlier dismissal notwithstanding, granted him bail, however, with a formidable rider in terms of a direction to deposit Rs.5.16 million, the amount allegedly siphoned off by him, with the Court, besides furnishing a bond in the sum of Rs.100,000/- with one surety. As the petitioner failed to arrange the amount, he moved the Court through C.M. No.137/2020 seeking exemption from the cash deposit, a request declined vide impugned order dated 01.06.2020.

2. Learned counsel for the petitioner contends that once the learned Judge-in-Chamber felt persuaded to release the petitioner on bail, imposition of a condition, compliance whereof is beyond his financial capacity, would tantamount to withhold the benefit of relief, otherwise held as extendable. It is next argued that the impugned condition being alien to law merits interference by this Court. The learned Law Officer has contested the plea.

3. Heard. Record perused.

4. Law on the grant or refusal of bail in criminal cases is by now clearly contoured and well settled, 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 non-bailable category of offences, grant of bail in crimes punishable with imprisonment of less than 10 years, presumably with charges on the lower side of gravity scale, the release of accused, after conclusion of investigation is a rule, however, even in appropriate cases, the Court may still validly decline the concession. In offences punishable with death or for imprisonment for 10 years or above, the accused cannot be released on bail unless he succeeds in making out a case calling for further probe. 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.”* The bond by the accused or the sureties, as the case may be, has to be executed to ensure compliance, contemplated by section 499 of the Code of Criminal Procedure 1898 (**‘the Code’**), reproduced below for ready reference:

**“Bond of accused and sureties.”**-(1) *Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend otherwise directed by the police officer or Court, as the case may be.*

*(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.”*

The survey of above provisions clearly demonstrates that 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. The Code does not envisage cash deposit except for an undertaking for good behavior within the framework of section 513 thereof.

The above interlocutory arrangement cannot be equated with the final adjudication of a criminal case, to be essentially settled on the strength of evidence with all procedural safeguards to conveniently enable the accused to vindicate his position without any embarrassment and during pendency of the process, he can secure interim freedom only if a case for his release is made out and in such eventuality, he cannot be additionally coerced to surrender or deposit amounts, forfeiture or settlement whereof is consequent upon final adjudication, that too, subject to the law. The statutory arrangements detailed above are founded on the paramount principle of equality before law as well as equal protection thereof; protection and equality that are not shadowed by the divergent financial capacities of different accused, otherwise found entitled to freedom, interim or ultimate, without strings.

5. For the above reasons, we have not been able to persuade ourselves to uphold the imposition of the impugned condition. Consequently, petition is converted into appeal and allowed, as a result whereof, order dated 20.05.2020 by the Islamabad High Court is set aside. Petitioner's plea for bail shall be deemed as pending before the High Court for decision afresh in accordance with law on the available grounds.

**Judge**

**Judge**

Islamabad, the  
7<sup>th</sup> August, 2020

Not approved for reporting

*Azmat/-*