

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 715 OF 2021

(On appeal against the order dated 21.06.2021 passed by the Lahore High Court, Lahore in Crl. Misc.No.18050-B/2021)

Muhammad Usman Shakir

... Petitioner

VERSUS

The State etc

... Respondents

For the Petitioner: Mr. Javed Imran Ranjha, ASC

For the State: Mirza Abid Majeed, DPG
Mr. Tariq, Inspector

For the Complainant: Nemo

Date of Hearing: 09.09.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks post arrest bail in case registered vide FIR No. 103/2021 dated 06.02.2021 under Section 408 PPC at Police Station Defence-B, District Lahore. The same relief was denied to him by the learned Trial Court vide order dated 08.03.2021 as well as by the learned High Court vide impugned order dated 21.06.2021.

2. Briefly stated the facts of the matter are that the petitioner was working as Accounts Assistant in M/s Nippon Paint. The said company was running a scheme under which after opening a paint box, a token of certain amount would come out and on its return, the Company would re-pay the amount to the holder of the token. Pursuant to an audit report, it was found that the petitioner instead of entering the tokens in the computer system sent them back for redemption in the market due to which a loss of about forty million rupees was caused to the company.

3. *Learned counsel for the petitioner argued that the petitioner has been falsely roped in this case against the actual facts and circumstances of this case. Contends that the prosecution has leveled allegation of fraud to the tune of rupees forty million but could not adduce any evidence in this regard except the bald statements of three shopkeepers recorded under Section 161 Cr.P.C at a belated stage. Contends that the prosecution has not substantiated sufficient material so far against the petitioner whereas co-accused of the petitioner with similar role has already been granted bail by the learned High Court vide order dated 01.04.2021. Further contends that following the rule of consistency, the petitioner also deserves to be released on bail. Lastly contends that the petitioner is behind the bars since 16.02.2021 without any trial, hence, keeping in view the principle that basic law is bail not jail, the petitioner is entitled to be released on bail in the interest of justice.*

4. *On the other hand, learned Deputy Prosecutor General has defended the impugned order whereby post-arrest bail was declined to the petitioner. He contended that the petitioner along with his co-accused has caused a huge loss to the company and he is specifically named in the crime report with the specific role, therefore, he does not deserve any leniency by this Court.*

5. *We have heard the learned counsel for the parties and perused the record with their able assistance.*

There are basically two main ingredients to attract the provisions of Section 408 PPC, (i) entrustment of property, (ii) misappropriation with mens rea. A plain reading of the aforesaid provision of law clearly reflects that the words 'clerk' or 'servant' have been mentioned in it. To establish criminal liability against an employee other than incorporated in the aforesaid provision, it seems essential to establish that the person against whom the accusation has been leveled clearly falls within the categories disclosed by the Legislature. Even while stretching the aforesaid provision of law, we deem it appropriate to evaluate the merits of the case, which could be a decisive factor in adjudication of the matter. Undeniably, the allegation against the petitioner is of causing huge loss of rupees forty million to the company by re-selling the tokens in

the market, which were already redeemed. To substantiate the allegation, the prosecution has recorded the statements of three shopkeepers. Allegedly, the tokens amounting to Rs.11,00,000/- and a cash amount of Rs.200,000/- was recovered from the petitioner. Unless and until the nexus between the amount recovered from the petitioner and loss occurred is established with exactitude especially when the contents of the crime report do not disclose the denomination/value and number of tokens utilized for causing loss to the company, the petitioner cannot be held guilty and kept behind the bars. Mere statements of three shopkeepers prima facie do not seem sufficient to curtail the liberty of a person for an indefinite period especially when the co-accused of the petitioner namely Abdul Rehman Khalil from whom the tokens of Rs.12,00,000/- were recovered has been granted bail by the learned High Court vide order dated 01.04.2021. Keeping in view the facts and circumstances of this case, the petitioner is also entitled for the same relief following the rule of consistency. Reliance is placed on the case reported as Muhammad Fazal @ Bodi Vs. The State (1979 SCMR 9) wherein this Court held as under:-

"Without going into the merits of the case and the various rulings mentioned in the petition for leave to appeal requiring our consideration and interpretation, we think that the petitioner should be released on bail on the principle of requirement of consistency in the same case and for the similar reason that the co-accused to whom a role similar to that of the petitioner was attributed had been so released by another learned Judge of the same High Court."

6. *Prima facie there are sufficient grounds to take into consideration that the case of the petitioner is fully covered by Section 497(2) Cr.P.C. calling for further inquiry to his guilt. The alleged offence also does not fall within the prohibitory clause of Section 497 Cr.P.C. The petitioner is behind the bars since 16.02.2021 and no useful purpose would be served by keeping him behind the bars for an indefinite period till the conclusion of the lengthy trial.*

7. *For what has been discussed above, the petitioner has made out a case for grant of bail. Consequently, we convert this petition into appeal, allow it, set aside the impugned order and*

admit the petitioner to bail subject to his furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
9th of September, 2021
Approved For Reporting
Khurram