Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE

(JUDICIAL DEPARTMENT)

Case No: Cr. Misc. No.5124-B of 2017

Muhammad Shafique **Versus** The State, etc.

S.No. of Order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel where necessary

18.05.2017. Ch. Abdul Ghaffar, Advocate for the petitioner.
Mr. Muhammad Amjad Rafique, Additional Prosecutor General with Ghulam Qadir ASI.
Mr. Asim Irshad Sheikh, Advocate for the complainant.

Muhammad Shafique petitioner through the instant petition seeks extraordinary relief of pre-arrest bail in case FIR No.594 dated 25.11.2016 under sections 420/468/471 PPC lodged on the complaint of Amanat Ali at Police Station Kotwali, Faisalabad.

2. Before the learned counsel representing the petitioner made submissions for grant of pre-arrest bail to the petitioner, learned counsel for the complainant submitted that petitioner has been arrested in another criminal case and apprehension of immediate arrest which is requisite condition to entertain petition for grant of pre-arrest bail to accused person does not exist, as a result, instant petition has become infructuous.

3. Arguments heard. Record perused.

4. To answer the question raised by the learned counsel representing the complainant, it would be appropriate to reproduce the provisions of section 498 and 498-A Cr.P.C. which are as under;

> ***498.*** "***Power to direct admission to bail or reduction of bail.*** *The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive; and the High Court or Court of Sessions may, in any case, whether there be an appeal on conviction or not direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced."*
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> ***498-A. "No bail to be granted to a person not in custody, in Court or against whom no case is registered, etc.*** *Nothing in section 497 or section 498 shall be deemed to require or authorize a Court to release on bail, or to direct to be admitted to bail, any person who is not in custody or is not present in Court or against whom no case stands registered for the time being and an order for the release of a person on bail, or a direction that a person be admitted to bail, shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction."*

Both the said provisions do not envisage the situation which is being created by the learned counsel for the complainant, in fact is misconceived and is not entertainable for the reasons;

> *Firstly, an accused person was granted ad-interim bail by the Court of competent jurisdiction and if the submission of learned*

> *counsel is accepted then it would amount to giving license to the Investigating Officers/police officials to frustrate orders of the competent Court.*
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> *Secondly, when accused person approach the learned Sessions Court or this Court for the grant of pre-arrest bail, he seeks relief in one case or cases separately as is permitted under the said provision and thereafter grant of bail in one case does not mean that concession of pre-arrest bail has also been extended to the accused in all the cases registered against him nor refusal of the Court to grant pre-arrest bail in one case disentitles him to the said relief in other criminal cases registered against him.*
>
> *Thirdly, if the arrest of the accused in one case is deemed arrest in all other criminal cases registered against him, it will be offensive to all norms of fair trial and will occasion grave miscarriage of justice.*

Fair trial should not be given restricted meaning and it includes all the stages started from the registration of case, investigation, inquiry if any directed to be conducted in the said case, and trial. It is indefeasible right of the accused that he should be afforded full opportunity to prove his innocence.

In case reported as **(PLD 2012 Supreme Court 553)** Sue moto case No.4 of 2014, it was observed as under;-

> "***The principle of right to fair trial has been engaged and recognized by our courts since***

> ***long and is by now well entrenched in our jurisprudence. The right to fair trial undoubtedly means a right to a proper hearing by an unbiased competent forum. It has been consistently held by the Hon'ble Supreme Court that principle of natural justice (right of hearing) shall be read in every situation even if not expressly provided or unless specifically excluded.***

In case reported as *"NEW JUBILEE INSURANCE COMPANY LTD., KARACHI V. NATIONAL BANK OF PAKISTAN KARACHI* **(PLD 1999 Supreme Court 1126)** the Hon'ble Supreme Court has gone to the extent of associating the right of fair trial with a fundamental right of access to justice.

In case reported as *"JAFAR @ JAFARI V. THE STATE* **(2012 SCMR 606)**" it was held that;

> "***Mere registration of case by itself is not sufficient to declare an accused as an habitual offender unless it is proved /established that he has been convicted in any of the said cases. In order to safeguard the valuable rights to defense and fair trial of the accused the Court cannot allow itself to be prejudiced or in any manner influenced by the registration of another case, multiple cases or even conviction. Any such influence will deny an accused the right to a fair trial and due process, as it is inherent in the said right that Court is not only free from bias but ought to be seen as such.***

In case reported as *Zahira Habibullah H. Sheikh and anther v State of Gujrat and others* **(2004 AIR (SC) 3114)**" the Supreme Court of India observed as under;

> "*The principles of rule of law and due process are closely linked with human rights protection. Such right can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a* ***trial*** *which is primarily aimed at ascertaining truth has to be* ***fair*** *to all concerned. There can be no analytical, all-comprehensive to exhaustive definition of the concept of a* ***fair trial****, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the* ***trial*** *deprived the quality of* ***fairness*** *to a degree where a miscarriage of justice has resulted. It will be not correct to say that it is only the accused who must be fairly dealt with. That would be turning nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal* ***trial****. Denial of a* ***fair trial*** *is as much injustice to the accused as is to the victim and the society.* ***Fair trial*** *obviously would mean a* ***trial*** *before an* ***impartial Judge****, a* ***fair*** *prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.*

In view of the above discussion in particular principles laid down as to the fair trial by the Hon'ble Supreme Court, I am of the considered view that withholding of concession of pre-arrest bail to the present petitioner particularly when his absence at the time of confirmation of his ad-interim bail is not willful and is being represented through counsel, it will not serve the ends of justice. I will rely on the case reported as *"Shabbir Ahmad v. The State, etc.* **(PLD 1981 Lah. 599)**" which laid down the guidelines to treat the petitioner/accused at the time of confirmation of his ad-interim bail if for some extraneous reasons he has not appeared before the Court.

> "*The Full Bench of this Court after exhaustive analysis of precedent case-law has inter alia been pleased to enunciate the law as under:-*
>
> > *"I am inclined to hold that the presence of the accused as mentioned in section 498-A Cr.P.C. further strengthens the undertaking which the accused and his sureties give to the Court by furnishing bonds under section 499. It seems to be obligatory for the accused to appear in Court on all subsequent dates after prohibitory order of his arrest was passed by the Court on surrender of his person, for, he becomes custodia legis. This has also been observed by S. A. Rehman, J. in Sadiq Ail's case. It is, however, discretionary for the Court to give him a direction not to appear if the Court so chooses. I am also conscious of the fact that the practice, which is brought to the notice of the Bench, is that in certain cases the Sessions Judges*

> *lock the doors and get the accused arrested when they come to the conclusion that the accused is not entitled to bail after examining the allegations made by the prosecution. Courts are sanctuaries and the reverence must be shown. It is undesirable that the Police arrests the accused in Court……..”*

It was held in para. 13 of the judgment to the following effect:--

> *“The absence of the accused for genuine cause has to be taken into consideration by the Court and it should not take hasty steps without affording reasonable opportunity of showing cause of his absence.”*

I, therefore, hold that though petitioner has not appeared today for the reason beyond his control, this Court is obliged to entertain and decide his petition for grant of pre-arrest bail on merit, as he is duly being represented through counsel.

In case reported as *“Hidayat Ullah Khan versus The Crown* **(PLD 1949 Lahore 21)**” it was held that under the provision of section 498 Cr.P.C., the High Court has powers to **“direct that any person be admitted to bail”** and give these words their full weight, I see no aspect from the conclusion that the power extends not only to the grant of bail to persons who are in the custody of the High Court or of an inferior Court or a police officer but also includes powers to give direction that should be

admitted to bail who are not in a custody. The Court need to be satisfied that if it stayed its hand until the police officer had himself exercise his discretion in the matter and refused, upon arrest, to grant bail, a grave or irreparable wrong or injustice might result which it was in the highest degree desirable to avoid, while at the same time preserving the interest of justice so far as they related to the charge against said accused person. It was further observed that;

> *"For the reasons given above, the reply which I would give to the question referred to us is that, in a proper case the High Court has power under section 498, Criminal Procedure Code, to make an order' that a person who is suspected of an offence for which he may be arrested by a police officer or a Court, shall be admitted to bail. The exercise of this power should, however, be confined to cases in which, not only is good prima facie ground made out for the grant of bail in respect of the offence alleged, but also, it should be shown that if the petitioner were to be arrested and refused bail, such an order would, in all probability, be made not from motives of furthering the ends of justice in relation to the case, but from some ulterior motive, and with the object of injuring the petitioner, or that the petitioner would in such an eventuality suffer irreparable harm."*

However, it was made clear in case reported as "*Jairam Das v. King Emperor* **(AIR (32) 1945 PC 94)**" it was made clear ***that Court confers no power on a High***

Court to grant bail in the case of a convicted person except under section 426 Cr.P.C. It was also held that the High Court has no inherent power apart from thus expressly mentioned in the Criminal Procedure Code, to grant bail in cases falling under the Code.

These principles for grant of pre-arrest bail were approved by the Hon'ble Supreme Court in cases reported as *"Sadiq Ali v. State* **(PLD 1966 Supreme Court 589)**, *Muhammad Ayub v. Muhammad Yaqoob* **(PLD 1966 Supreme Court 1003)**, *Iqbalur Rahman v. The State* **(PLD 1974 SC 83)**, *Muhammad Hussain v. Muhammad Anwar Ahmad Khan and others* **(1975 SCMR 151)**, *Choudhary Muhammad Shafi v. Choudhary Muhammad Anwar Samma and another* **(1975 SCMR 219)**, *Choudhary Zahoor Illahi v. The State* **(1981 SCMR 935)**, *Ali Muhammad v. Yamin and another* **(1981 SCMR 1139)**, *Murad Khan v. Fazal-e-Subhan* **(PLD 1983 SC 82)**, *Mohib Raziq v. Shah Muhammad and another* **(1983 SCMR 1130)** *and Mst. Bashiran Bibi v. Nisar Ahmad Khan and others* **(PLD 1990 SC 83 ref.)**

5. Amanat Ali complainant of the case reported the crime on 25.11.2016 regarding the occurrence that took place on 10.10.2014 alleging therein that Muhammad Shafique present petitioner alongwith his co-accused prepared a fictitious Fard and Iqrarnama in respect of land measuring 2 kanals 10 marlas, situated in Khewat

No.2469, Kathuni No.2610, Chak No.123 JB and sold said property to the complainant in consideration of Rs.47,5000/- per marla. Later on, it was learnt to the complainant that original owner of the said property was one Sardar Muhammad Rasi and present petitioner Muhammad Shafique and his co-accused had no concern with the said property.

6. Learned counsel representing the petitioner submitted that petitioner Muhammad Shafique is being dragged in the instant case out of personal motive and malafide and complainant got registered instant case by presenting distorted facts. It was further contended that there is delay in lodging the FIR and complainant of the case has not forwarded any plausible reason to explain this delay. Learned counsel representing the petitioner has also produced certified copy of a suit filed by Muhammad Shafique present petitioner against the complainant Amanat Ali on 06.04.2016 for cancellation of Iqrar Nama No.2899 dated 26.01.2016, which is much earlier to the registration of the present case by the complainant Amanat Ali wherein subject matter was the same regarding which instant FIR was registered. It has been brought on record that learned Civil Judge 1st Class, Faisalabad while striking of right of defendant/Amanat Ali complainant of the case to submit written statement/reply observed as under;-

> "*Today this suit was fixed for submission of written statement and written reply with cost of Rs.500/- as absolute final and last opportunity but the defendants have submitted application for adjournment. Perusal of record reveals that this suit was adjourned to 17.05.2016, 13.06.2016, 13.07.2016, 05.09.2016, 21.09.2016, 06.10.2016, 24.10.2016 and 02.11.2016 for submission of written statement but the defendants have remained failed to submit their written statement/reply. In the attending circumstances, further adjournment cannot be granted and instant application for adjournment is hereby dismissed. The right of defendants to submit their written statement/reply is hereby struck off.*

During investigation Amanat Ali complainant of the case could not produce evidence to prove his claim of advancing huge amount of Rs.1,81,00,000/- to the petitioner and also had not disclosed satisfactorily the mode of payment of said amount. Surprisingly, Amanat Ali complainant of the case despite elapse of three years had not approached the civil Court for the recovery of said huge amount paid to the petitioner.

From above noted facts and circumstances of the case, proposed arrest of the present petitioner in the instant case appears to have been motivated by ill-will and mala fide of the complainant and local police. Therefore, this petition for grant of extraordinary relief is accepted and ad-interim bail already granted to the petitioners is

confirmed subject to his furnishing fresh surety bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

(AHMAD RAZA GILANI)
JUDGE

Approved for Reporting

Judge

Sajid