

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**BAHAWALPUR BENCH, BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

Case No.      **Crl.Misc.No.3556-B of 2017.**  
**Syed Haq Nawaz Shah and another.**  
Versus  
**The State and another.**

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties of Counsel, where necessary.
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**01.02.2018** Ms. Khalida Rafique, Advocate vice counsel for the petitioner alongwith petitioner.  
Mr. Khalid Pervez Opal, D.P.G. with Irfan, A.S.I.  
Muhammad Rafique, Field Inspector.

By filing the instant petition, the petitioners seek their pre-arrest bail in case F.I.R.No.216 dated 21.09.2017, under Sections 379/411 PPC read with Rule 218 of the Punjab Mining Concession Rules, 2002, registered at Police Station Iqbal Abad, District Rahim Yar Khan.

2. Brief facts of the case are that on 21.09.2017 petitioners were found excavating sand (minor mineral) from their owned land, without any permission or lease from the Mines and Minerals Department, Bahawalpur.

3. The petitioners and departmental representative in attendance have undertaken to settle the matter amicably through A.D.R. and regulate it under the law. The complainant of the case will approach the “competent authority” under the Regulation of Mines and Oil Fields and Mineral Development (Government Control) Act, 1948, The Mines Concession Act, 2002 and the Punjab

Mining Concession Rules, 2002 for leasing out rights of excavation of minor mineral from the land owned by the petitioners.

4. Arguments heard. Record perused.

5. There is no denial that the petitioners are owner of land from which the sand (minor mineral) was being excavated by them, whereas under Section 49 of the West Pakistan Land Revenue Act, 1967, all the mines and minerals shall be deemed to have been the property of the Government. As conceded at Bar under the rules, the petitioners being owner of land have first right of getting lease of minor mineral or in case of lease to some other person right of royalty. From the facts and circumstances of the case, it is gathered that there is bonafide dispute in between the petitioners and the Mines and Mineral Department, Government of Punjab regarding their interest/s in landed property and the minor mineral respectively, which they have undertaken to resolve as per law. The offence for which the petitioners have been charged i.e Rule 218 of the Punjab Mining Concession Rules, 2012 is punishable upto three years or with fine not exceeding Rs.50,000/- or with both. Under schedule II Tabular “statement of offences, offences against other laws” appended with Code of Criminal Procedure, 1898, it is bailable. In this respect safely reliance can be placed

on case 'Anjum Sheraz Versus The State'[NLR 1999 (Criminal) Lahore 1]. It will be determined by the learned trial Court, on conclusion of trial that any offence punishable under Section 379/411 of Pakistan Penal Code, 1860 is made out or not, particularly when the offence charged has been adequately taken care of by special law i.e Rule 218 of the Punjab Mining Concession Rules, 2002. Person of the petitioners is not needed to police for any valid purpose. Refusal of bail in mechanical manner followed by grant of post arrest bail is not the intent of law. Reliance is placed on case 'Tariq Bashir and 5 others Versus The State' (PLD 1995 Supreme Court 34), wherein following salutary dictum has been laid down:-

*“It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases.”*

In case 'Khalil Ahmed Soomro and others Versus The State' (PLD 2017 Supreme Court 730), following dictum has been laid down:-

*“When the accused persons were entitled to post arrest bail, their prayer for pre-arrest bail, if declined, would be a matter of technicality alone---Accused persons were likely to be humiliated and disgraced due to their arrest at the hands of the local police.”*

Following the above case law, to my view in case relief of pre-arrest bail is refused to the petitioners, they will be disgraced, humiliated in the eyes of public at large.

6. In view of above discussion, this petition is allowed and the ad-interim pre-arrest bail already granted to the petitioners is confirmed subject to their furnishing fresh bail bonds in the sum of Rs.50,000/- each with one surety each in the like amount to the satisfaction of learned trial Court.

**(Mujahid Mustaqeem Ahmed)  
Judge**

**APPROVED FOR REPORTING.**

**Judge**

Shahzad Ahmad Nasir\*