ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Misc. No. 530-B of 2021

Muhammad Ali Junejo

Versus

The State

Criminal Misc. No. 531-B of 2021

Muhammad Hanif Khan

Versus

The State & another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	07.06.2021	Raja Rizwan Abbasi, Advocate for the petitioner / accused in Crl. Misc. No. 530-B of 2021. Mr. Kashif Ali Malik, Advocate for the petitioner / accused in Crl. Misc. No. 531 of 2021. Ch. Fayyaz Hussain, Assistant Attorney General. Tahir Khan, Assistant Director, FIA.

By this single order, I intend to decide the above mentioned two bail petitions.

02. Through the above mentioned bail petitions, the petitioners seek bail after arrest in a case F.I.R. No. 03/2021, dated 26.04.2021, offences under section 420, 468, 471, 477-A, 109, 34 P.P.C read with Section 5(2)47 PCA, registered at police station FIA/Corporate Crime Circle, Islamabad.

03. It is alleged that consequent upon enquiry No. RE-118/2020, it was found that petitioners are involved in the fraudulent allotment of plots of

CDA, hence the instant FIR.

04. Learned counsel for the petitioners *inter alia* contends that the petitioners / accused are innocent and have been implicated in this case with malafide intention; they have got no concern with the alleged offence and no direct or indirect evidence is available against them; investigation in the case has been completed; the offence does not fall within the prohibitory clause of Section 497 Cr.P.C; bail after arrest of co-accused have been granted by this Court on 27.05.2021, therefore, petitioners / accused are entitled for grant of post arrest bail on the principle of consistency.

05. Conversely, Learned Assistant Attorney General opposed the instant bail petitions and argued that the petitioners / accused are nominated in the FIR; they have committed a heinous crime and have caused loss to public ex-chequer, hence they are not entitled for grant of bail after arrest.

06. I have considered the arguments advanced by learned counsel for the petitioners / accused, learned Assistant Attorney General and perused the record with their able assistance.

07. The offences under Sections 420, 471 and

477-A P.P.C are bailable. As far as the offence under Section 468 P.P.C read with Section 5(2)47 PCA, is concerned, it has been confirmed by the Investigating Officer during the course of arguments that there is no evidence available on record which depicts that the petitioners themselves have prepared any forged document or have received illegal gratification from any person. Investigating Officer further states that there is no statement of any witness who has alleged that the petitioners / accused have received bribe / illegal gratification from him. The only allegation leveled against the petitioners / accused is that during their posting as Accounts Officer / Divisional Accountant they forwarded the Pay Orders for encashment to the bank and the amount was credited in the account of CDA, and delayed charges were not properly calculated.

08. As the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. In this regard law has been laid down by the Hon'ble Supreme Court of Pakistan in a case titled as ***"Tariq Bashir and others VS. The State"*** (**PLD 1995 Supreme Court 34)**, wherein, it is held that "*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 for 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, for example:-

(a) where there is likelihood of abscondance of the accused;
(b) where there is apprehension of the accused tampering with the prosecution evidence;
(c) where there is danger of the offence being repeated if the accused is released on bail; and
(d) where the accused is a previous convict".

09. The same principle has been laid down by Hon'ble Supreme Court in a case titled as "***Muhammad Tanveer VS. The State and another"*** **(<u>PLD 2017 Supreme Court 733),</u>** wherein it is held that "*once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of Section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should*

follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts". It has further been held that *"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in Section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions."* ***(Emphasis added).*** The same principle has been laid down by the Hon'ble Supreme Court in cases reported as ***2011 SCMR 1708, 2016 SCMR 1439, 2020 SCMR 1258 and 2020 SCMR 717***, wherein it is held that "*where a case fell within non-prohibitory clause of section 497 Cr.P.C. the concession of granting bail must be favorably considered and should only denied in the exceptional circumstances"*.

10. It is admitted at all ends that the co-accused

having the same role have been released on bail, hence the present accused are also entitled for grant of bail on the principle of consistency. Reliance is placed on a case titled as ***"Ghulab Khan V. Chairman N.A.B and another"*** **(2020 SCMR 285)**. The same principle has been laid down in cases titled as ***"Muhammad Daud and another V. The State and another"*** **(2008 SCMR 173)**, ***"Sheraz V. The State"*** **(2021 MLD 292)** ***and "Muhammad Azam V. The State"*** **(2008 SCMR 249).**

11. The case depends upon the documentary evidence, which has already been collected by the I.O. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as ***"Saeed Ahmed V. The State"*** **(1996 SCMR 1132)** *that, "The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. It has further been held that as there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution". Reliance is also placed upon a case titled as "Muhammad Shabbir V. The State and others" (2020 YLR Note 22).*

12. Mere heinousness of the offence is not

sufficient to take away discretion of the Court to grant bail which is never refused as punishment and there is no legal or moral compulsion to keep a person in jail. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by mistaken relief of bail after arrest but no satisfactory reparation can be offered to the accused for his unjustified incarceration if he is acquitted ultimately.

13. Investigation in the case has been completed. The petitioners / accused are previously non-convict. They are no more required by the police for the purpose of further investigation. They are Government Servants, there is no chance of their absconsion or tampering with the evidence. They are behind the bars without any progress in the trial. Fair and speedy trial is one of the fundamental rights of the petitioners; no moral and legal compulsion exists to keep them behind the bars for an indefinite period which amounts to punishment without trial.

14. A tentative assessment of record shows that present petitioners have made out a case of further inquiry as envisaged under Section 497(2) Cr.P.C.

15. In view of above, both the petitions are accepted and the petitioners are admitted to bail

subject to furnishing bail bonds in the sum of **Rs. 100,000/- (One Hundred Thousand only)** each with one surety each in the like amount to the satisfaction of learned trial Court.

16. Needless to mention that, this is a tentative assessment which shall not affect the trial of case in any manner.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-