ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No. 348-Q/2022

Romi Jutt

Versus

DIG Operations, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.02.2022	Mr. Ibrahim Arshad Khan, Advocate for petitioner.

Through instant writ petition, petitioner namely Romi Jutt has prayed for *quashing* of FIR No. 101, dated 18.01.2022, U/s 420 PPC, registered with Police Station Industrial Area, I-9, Islamabad.

2- Respondent No. 4 lodged an FIR against the petitioner with the allegations that he entered into an agreement with the petitioner whereby the petitioner was bound to provide Iron Rod (sariya) to the respondent No. 4, in this context petitioner has received payment amounting to Rs. 50,88,000/- in advance through Cheque but the petitioner failed to deliver the required quantity as per the agreement and provided less quantity of iron rod (sariya) to the respondent No. 4. The present petitioner has not fulfilled his commitment as per agreement, hence instant FIR.

3- Learned counsel for the petitioner contends that an inquiry was conducted by respondent No. 2 & 3 in the matter and

after going through the statement of both the parties, exonerated the petitioner. Further contends that the respondent No. 4 while concealing the fact, got registered an FIR with false allegation and malafide intention. He further added that petitioner has not committed any offence and registration of FIR is without lawful authority, which may be quashed.

4- Heard, record perused.

5- Record reveals that the subject FIR was registered on 18.01.2022, U/s 420 PPC while the petitioner has got ad-interim pre-arrest bail on 19.01.2022 from the Court of learned Additional & Sessions Judge, Islamabad (West).

6- The grounds for seeking quashment of FIR require deep thorough probe and investigation, which is not permissible in constitutional jurisdiction.

7- It is settled principle that the trial court can acquit the accused under Section 249-A Cr. P.C and 265-K Cr. P.C, as the case may be, at any stage of the proceedings and in the circumstances of each case, the appropriate remedy for the accused appears to be request to the trial court to consider their case under the provisions of law. The exercise of extra ordinary discretion is permissible in cases where on the basis of facts admitted and patent on record, no offence can be made out, and further proceedings would amount to abuse of process of law to allow

prosecution to continue with the trial. Reliance is placed upon cases of "State through Advocate-General, NWFP Peshawar and others. V. Gulzar Muhammad and others" (**1998 SCMR 873**) and "Miraj Khan V. Gull Ahmed and 3 others" (**2000 SCMR 122**).

8- In the case of "Ajmeel Khan V. Abdul Rahim and others." (**PLD 2009 SC 102**), after availing remedy of pre arrest bail, petitioner filed quashment petition which was dismissed by the High Court and then the matter came up for hearing before the Hon'ble Supreme Court of Pakistan. It was observed in the order that:-

> *"Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamounts to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it*

> *disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police."*

9. The Hon'ble Supreme Court of Pakistan in the latest pronouncement in case of "Dr. Sikander Ali Mohi ud Din v. Station House Officer and others" (**2021 SCMR 1486**) has held that "Apart from this aspect of the case, as the matter was of criminal nature, the same cannot be closed down with a stroke of pen on the ground that civil litigation is pending adjudication between the parties coupled with the findings in a police investigation. It is now settled that criminal as well as civil proceedings can go side by side if the same is spelt out on the basis of cogent foundation."

10. It has further been held that *"the superior court of the country while dealing with such matter had already given finding* ***that if, prima facie, an offence has been committed, ordinary course of trial before the court should not be allowed to be defeated by resorting to constitutional jurisdiction of High Court****."* [Emphasis supplied*]*

11. The remedy of '*quashment*' is an extra ordinary remedy, to be invoked sparingly in extra ordinary circumstances and for doing so, prime consideration is to

see that the very registration of FIR amounts to misuse of process of law or that same was registered without any legal justification. The frequent filing of such like petitions, as a matter of routine, not only results in overburden of the courts but also makes the issue complex.

12. It has now become a common practice, that in every criminal case, besides availing remedy of pre arrest bail again and again, after withdrawing the first and then filing the same before the same court, without disclosing the facts, petitions for *quashment* are also being filed in routine which trend is required to be discouraged.

13. In view of above, instant writ petition is accordingly **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Kamran