ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT

Crl. Misc. No. 483-B of 2022

Waseem Anjum

Versus

The State, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.04.2022	Raja Inaam Ameen Minhas, Advocate for petitioner, Mr. Manzoor Ahmad Jajja, Advocate for respondent No.2/complainant. Syed Nazar Hussain Shah, AAG along with Asfand Yar S.I./F.I.A with record.

This is post-arrest bail petition by accused-petitioner *(Waseem Anjum)* in F.I.R. No.07 dated 03.03.2022, under Section 109, 409, 420, 468, 471 P.P.C, read with Section 5(2) 1947 PCA, registered at Police Station F.I.A, Corporate Crime Circle, Islamabad.

2. According to the allegations set-forth in the F.I.R, Muhammad Fayyaz Awan, the then Secretary of Jammu & Kashmir Cooperative Housing Society, executed bogus agreement dated 19.07.2013 with one Aziz Ahmed s/o Fida Muhammad (*brother in law of Naseem Anjum the then Treasurer, J&KCHS*) to transfer the land measuring 05-kanal in F-15 Markaz, Islamabad with possession in Khasra No.621, situated in the Revenue Estate of Tarnol, Islamabad. Subsequently, 03-Commercial Plots *(measuring 397 Sq yards, 275 Sq yards & 274.75 Sq. yards*) were allotted to said Aziz Ahmed without securing transfer of land measuring 05 Kanal in the name of Jammu & Kashmir Cooperative Housing Society. Later on, two commercial plots *measuring 397 sq.yards and measuring 275 sq. yards* were transferred in the name of Ali Waqar s/o Waqar Ahmed Malik from Aziz Ahmed s/o Fida

Muhammad. **The payment of commercial plot No.19 *(measuring 275 sq.yards in F-15 Markaz*) was made by Ali Waqar in the Bank accounts of Naseem Anjum the then Treasurer, J&KCHS, Waqas Anjum & Waseem Anjum (petitioner) sons Muhammad Shafi Anjum**. As per record, the Jammu & Kashmir Cooperative Housing Society further allotted two Agro farms measuring 7 kanal & 8 kanal alongwith 01 commercial plot measuring 166.6 Sq. yards to Ali Waqar s/o Waqar Ahmad Malik. As per allegations, for the above stated transactions, no approval was sought from the Registrar Cooperative and AGM for the land agreement with Aziz Ahmed.

3. Learned counsel for the petitioner contends that the very registration of instant F.I.R is tainted with *malafide;* that co-accused namely Ali Waqar Malik has been granted bail by the learned trial Court vide order dated 29.03.2022, hence petitioner is also entitled for same treatment on the basis of rule of consistency;that the petitioner is neither member nor office holder of Managing Committee of the Society, being a private person he has nothing to do with affairs of the society; that the Management committee for the year 2011-2014 was responsible for all decisions making, execution of agreements, recipient of payments and being authority to allot plots etc; that there is unexplained delay of 12 years in lodging the FIR, which creates serious dent; that the FIA has no jurisdiction to entertain or inquire into a civil matter; that offence under Section 109, 409 PPC & 5(2) 47 PCA are not attracted against the petitioner; that the investigation is complete and his further incarceration would serve no useful purpose, therefore, entitled to the concession of bail.

4. On the other hand, learned AAG assisted by learned counsel for the complainant/JKCHS

argued that the petitioner has been found involved in the commission of alleged offence after thorough inquiry; that sufficient material is available on record and that the petitioner has committed fraud, therefore, not entitled to the concession of bail at this stage.

5. Arguments heard, record perused.

6. Record reveals that offence under Section 420 and 471 PPC are bailable wherein bail is to be granted as a matter of right while offence under section 468 PPC and section 5(2)47 PCA although non-bailable but do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. In the latter category, grant of bail is a rule and refusal is an exception as laid down by the Hon'ble apex Court in the case of *"Muhammad Ramzan alias Jan v. The State and others* **(2020 SCMR 717)**.

7. As regards offence under Section 409 PPC ("*criminal breach of trust by public servant*"), its application to the extent of present petitioner is to be seen by the Trial Court after recording of evidence.

8. In addition, co-accused namely Ali Waqar from whose accounts allegedly funds were transferred in the account of the petitioner has already been enlarged on bail by the learned Trial Court vide order dated 29.03.2022.

9. The petitioner is behind the bars since arrest i.e. 15.03.2022, investigation has been completed and he is no more required for further investigation, therefore, his further incarceration would serve no useful purpose.

10. In view of above tentative assessment, petitioner has succeeded to make out a case for grant of post arrest bail at this stage. Consequently, instant criminal miscellaneous is **allowed**. The

petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.10,00,000/- (one million) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*