JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : CRL. REV. NO.127-2023

Imran Ahmad Khan Niazi

Vs.

The State etc.

Petitioner by	:	Barrister Salman Safdar, Mr. Muhammad Shoaib Shaheen, Advocate, Barrister Umair Khan Niazi, Ch. Khalid Yousaf, Mr. Niaz Ullah Khan Niazi, Mr. Naeem Haider Panjutha, Malik Fiaz Kandwal, Mr. Junaid Akhtar Awan, Mr.Mazhar Ali Haider, Mr. Sarwan Kumar Bheel & Mr. Zahid Bashir Dar, Advocates for petitioner.
Respondents by	:	Mr. M. Nazir Sultan Maikan, Special Public Prosecutor and Mr. Tahir Kazim, Law Officer, IGP with Sajid Ikram, Inspector CTD, P.S. Barakahu, Abdul Qadir, Inspector CTD, P.S. Khanna, Shabbir Ahmad, Inspector, P.S. Ramna, Iftikhar Ahmad, ASI, P.S. Tarnol, Sana Ullah, ASI, P.S. Karachi Company & Ijaz Ahmad Gondal, SI, P.S. Secretariat, Islamabad.
Date of hearing	:	21.09.2023

AAMER FAROOQ C.J. The present judgment shall dispose of captioned petition as well as Criminal Revisions mentioned in the Schedule-I attached herewith, as common questions of law are involved.

2. The petitioner namely Imran Ahmad Khan Niazi has been implicated in a number of cases, the details whereof, are mentioned in the Schedule-II attached herewith. In this regard, the referred Schedule reflects the Criminal Revisions with case (s) and details thereof. In all the cases mentioned in Schedule-II ibid, the petitioner had applied for bail before arrest before the courts of first instance and had been granted ad-interim pre-arrest bail. The petitioner was arrested on 05.08.2023 pursuant to his conviction in the Criminal Complaint filed by Election Commission of Pakistan in respect of corrupt practices under the Elections Act, 2017. Consequent to the said conviction, the petitioner was arrested on 05.08.2023 and was committed to Central Jail Adyala, Rawalpindi (subsequently transferred to Central Jail Attock) to serve the sentence. On the dates fixed by the courts of first instance, the petitioner did not appear in person before the courts though applications for exemption from appearance and/or, in the alternative, seeking production of the petitioner before the courts, was made. The said applications

were dismissed by the trial courts (with respect to matters pending before Additional Sessions Judge (West), Islamabad; the same were dismissed on 15.08.2023; the referred orders are subject matter of challenge in Criminal Revision Nos.127-2023, 128-2023, 129-2023, 130-2023, 132-2023 & 133-2023). Bail applications before the Judge, Anti-Terrorist Courts, were dismissed on 15.08.2023, which are the subject matter of Criminal Revisions Nos.131-2023, 134-2023 & 135-2023. All the Criminal Revisions challenge dismissal of the bail before arrest applications by the courts mentioned above.

3. Learned counsel for the petitioner *inter alia* contended that there is miscarriage of justice inasmuch as there is technical ouster of the petitioner; in this behalf, it was pointed out that bail applications, in which, once notice has been issued, ought to have been decided on merit in the presence of the accused/petitioner. Reference was made to cases mentioned in the footnote [1]. It was submitted that access to justice is a fundamental right, which any person is entitled to, and the technical ouster of the petitioner tantamount to denial of such right. Reference was made to cases indicated in footnote [2]. Learned counsel added that since petitioner is facing multiple proceedings, a blanket order could have been passed. Reliance was placed on case reported in footnote [3]. It was also added that this Court has concurrent jurisdiction with that of courts of first instance. Reliance is placed on case footnoted [4]. Learned counsel finally added that this Court could have ordered production of the petitioner. Reliance is placed on case mentioned in footnote [5].

4. Learned Special Public Prosecutor *inter alia* contended that despite dismissal of bail applications, the petitioner has not been arrested, as his custody is not required at the moment.

5. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

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[1] Shah Zaib and others Vs. The State (PLD 2021 Supreme Court 886), Malik Tariq Hanif Awan Vs. The State and 2 others (2021 P.Cr. LJ 250), Abdul Rashid and 3 others Vs. The State (2006 YLR 2058), Subedar (R) Abdul Rehman and another Vs. The State (1981 P Cr.LJ 61), Maulana Fateh Muhammad Vs. The State (PLD 1973 Lahore 874) & Muhammad Shafique Vs. The State and another (2018 YLR 323).

[2] Miss Benazir Bhutto Vs. Federation of Pakistan and another (PLD 1988 Supreme Court 416), Government of Baluchistan through Additional Chief Secretary Vs. Azizullah Memon and 16 others (PLD 1993 Supreme Court 341) & Sharaf Faridi and 3 others Vs. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another (PLD 1989 Karachi 404)

[3] Maulana Abdus Sattar Khan Niazi Vs. The State (PLD 1974 Lahore 324).

[4] Sh. Zahoor Ahmad Vs. The State (PLD 1974 Lahore 256)

[5] Sundeep Kumar Bafna Vs. State of Maharashtra and others (Criminal Appeal No.689-2014)

6. The factual aspect of the matter, leading to filing of present Criminal Revisions, has been mentioned hereinabove.

7. The instant Criminal Revisions have been filed under sections 435 & 439 Cr.P.C. read with section 561-A Cr.P.C. impugning orders dated 15.08.2023.

8. In order for a bail before arrest application to be decided, the petitioner needs to be present before the court in terms of section 498-A Cr.P.C. Generally, at the time when the applications for bail before arrest are entertained, ad-interim bail before arrest is granted, it is observed by the court that the petitioner shall be present on every date of hearing. The only exception to the said order is when request for exemption is sought and granted by the court, which exemption should liberally be granted, if there seems to be genuine bonafide reasons for absence of the accused, however, the court cannot decide the application for bail before arrest in the absence of the accused. The said principle was reiterated and highlighted by the Supreme Court of Pakistan in a recently handed down judgment reported as Shah Zaib and others Vs. The State (PLD 2021 Supreme Court 886). It was observed by the Apex Court that where the petitioner is not present in the court, the court simply can dismiss the application for bail before arrest due to his absence, but should not proceed to decide the case on merits. It was also observed that any subsequent application for bail before arrest by the same petitioner should not be agitated in the High Court but rather before the court of first instance, which had earlier dismissed the application due to non-appearance and explain his reasoning for the absence and in case, the court finds absence plausible, can proceed to decide the case on merit. It is reiterated and emphasized that the wording of section 498-A Cr.P.C. are crystal clear to the effect that on the date, when the application for bail before arrest is to be decided, the petitioner needs to be present before the court. In case reported as Malik Tariq Hanif Awan Vs. The State and 2 others (2021 P.Cr. LJ 250), the Lahore High Court observed that once the bail application is filed, the same needs to be decided on merit and where the absence of the accused from the court hearing the bail before arrest application is genuine, then indulgence should be shown in granting exemption from appearance or excusing absence. Similar observations were made in cases reported as Abdul Rashid and 3 others Vs. The State (2006 YLR 2058) & Subedar (R) Abdul Rehman and another Vs. The State (1981 P Cr.LJ 61). In case

reported as Maulana Fateh Muhammad Vs. The State (PLD 1973 Lahore 874), it was observed that once the petition is admitted and notice is given, it has to be decided on merit. The contention in the said case that petitioner should be present on each and every date, even if, there was no direction by the court, was spurned, as it was observed that this is not warranted by law.

8. In view of referred case law, admittedly, the petitioner was not present before the court on 15.08.2023 naturally for the reason beyond his control, as he was confined in Central Jail Attock to serve the sentence. The exemption from appearance sought was turned down. It would not be out of place to say that absence of the petitioner was not deliberate and the courts ought to have considered the said fact and liberally granted his application for exemption before determining further course of action.

9. In a fairly recent judgment, Lahore High Court in case reported as Farhan Masood Khan Vs. State etc. [PLJ 2021 Cr. C. (Lahore) 550], has observed that in an appropriate case, production order can also be passed by the courts hearing bail before arrest application. This is another option that was available before the courts, however, perhaps not plausible one for the reason that petitioner being an ex-Prime Minister and Chairman of a prominent Political Party, carries security risks and his transportation and security arrangements was a cumbersome task.

10. It is an interesting aspect to observe that despite dismissal of bail applications by the courts, the petitioner has not been arrested in any of the case in hand and it seems that State does not wish to effect his arrest. In the referred backdrop and in light of above case laws, we face a conundrum whether to permit the petitioner to file fresh bail applications explaining his absence pursuant to the dictum of the Supreme Court in case reported as PLD 2021 SC 886 supra, or allow these petitions and let the courts of first instance consider the future course of action for proceeding bail applications on merit, especially in the circumstances, when the State does not seem to be interested in the arrest of the petitioner.

11. As already observed, absence of the petitioner was not deliberate and was for the reasons beyond his control hence, to make him file fresh applications for bail before arrest once he is released from the confinement, in our opinion, would be unjust and unfair. The courts ought to have considered the purport of law in the facts and circumstances given and not arbitrarily dismiss the bail applications.

12. In view of foregoing, we allow instant petition as well as the petitions mentioned in the Schedule-I attached herewith and set aside orders dated 15.08.2023; consequently, the bail before arrest applications filed by the petitioner, shall be deemed to be pending along with applications for exemption from appearance. The courts, while deciding bail applications, may take note of the fact that the State did not arrest the petitioner despite dismissal of bail applications and on the said basis, determine the fate of the applications.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(CHIEF JUSTICE)

Announced in Open Court on 02.10.2023

JUDGE

(CHIEF JUSTICE)

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Schedule-I

Sr. No.	CASE NO.	TITLE
1.	Crl. Rev. No.128-2023	Imran Ahmad Khan Niazi Vs. The State etc.
2.	Crl. Rev. No.129-2023	Imran Ahmad Khan Niazi Vs. The State etc.
3.	Crl. Rev. No.130-2023	Imran Ahmad Khan Niazi Vs. The State etc.
4.	Crl. Rev. No.131-2023	Imran Ahmad Khan Niazi Vs. The State etc.
5.	Crl. Rev. No.132-2023	Imran Ahmad Khan Niazi Vs. The State etc.
6.	Crl. Rev. No.133-2023	Imran Ahmad Khan Niazi Vs. The State etc.
7.	Crl. Rev. No.134-2023	Imran Ahmad Khan Niazi Vs. The State etc.
8.	Crl. Rev. No.135-2023	Imran Ahmad Khan Niazi Vs. The State etc.

Schedule-II

Sr. No.	CASE No.	FIR No.
1.	Crl. Rev. No.127-2023	FIR No.255 dated 06.04.2023 under sections 505/153-A/138/506/131 PPC registered with P.S. Ramna, Islamabad
2.	Crl. Rev. No.128-2023	FIR No.463 dated 21.10.2022 under sections 324/427/148/149/109 PPC registered with P.S. Secretariat, Islamabad
3.	Crl. Rev. No.129-2023	FIR No.557 dated 14.05.2023 under sections 341/188/147/149/109 PPC registered with P.S. Karachi Company, Islamabad
4.	Crl. Rev. No.130-2023	FIR No.442 dated 06.06.2023 under sections 420/467/468/471 PPC registered with P.S. Kohsar, Islamabad
5.	Crl. Rev. No.131-2023	FIR No.128 dated 14.03.2023 under sections 341/353/186/506/109/188/153/290/382 PPC read with 11(x)/21(i) Anti-Terrorism Act, 1997 registered with P.S. Barakahu, Islamabad
6.	Crl. Rev. No.132-2023	FIR No.272 dated 10.05.2023 under sections 324/353/440/341/109/148/149/188/186 PPC registered with P.S. Tarnol, Islamabad
6.	Crl. Rev. No.133-2023	FIR No.271 dated 10.05.2023 under sections 353/341/382/440/506(ii)/109/148/149/186/188/ 123-A/337A(ii)/337-F(i)/337-F(ii) PPC registered with P.S. Tarnol, Islamabad
8.	Crl. Rev. No.134-2023	FIR No.243 dated 14.03.2023 under sections 11(x)/21(i) ATA, 1997 read with sections 341/353/186/506/109/188/153/290/382 PPC registered with P.S. Khanna Islamabad
9	Crl. Rev. No.135-2023	FIR No.242 dated 14.03.2023 under sections 11(x)/21(i) ATA, 1997 read with sections 341/353/186/506/109/188/153/290/382 PPC registered with P.S. Khanna Islamabad