HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.513-B/2014

Bilal Manzoor
VERSUS
The State, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.

01-10-2014. Mr Zahid Riaz Chaudhry, advocate for the petitioner.
Mr Tariq Bilal, Legal Advisor NR3C / FIA.
Malik Zahoor Ahmad Awan, Standing Counsel.
Mr Shahid Majeed, Inspector FIA with record.

This Court vide order dated 22-09-2014 had provided a last opportunity to the complainant. Despite the last order no one has appeared for or on behalf of the complainant; therefore, this Court proceeds with the petition.

2. The petitioner Bilal Manzoor son of Manzoor Ahmed has sought post arrest bail in case, F.I.R. No.27, dated 19-07-2014, registered under Sections 420, 468, 471, 109 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") and 36, 37 E.T.O. at Police Station FIA Cyber Crime, Islamabad.

3. Brief facts as narrated in the FIR are that the case was registered on the complaint of Qamar Abbas son of Liaqat Ali. It is alleged that the complainant had become victim of illegal activities of the petitioner, who by creating fake internet accounts with the intention to blackmail and extort money caused loss to innocent people.

4. Learned counsel for the petitioner contended that; the petitioner is innocent and has no concern with the alleged offence and story as narrated in the FIR is concocted; the petitioner has been nominated in the FIR on the basis of

mere presumptions, while no crime has been committed by him; he was not involved in any illegal transaction and has been involved in the instant case due to malafide on part of the complainant; Sections 420, 471 PPC are bailable, whereas offences under Sections 468, 109 PPC & 36, 37 of E.T.O. are not attracted to the extent of the present petitioner; there is no direct or indirect evidence against the petitioner, except the statement of the complainant; offences in the light of the story narrated in the FIR are not attracted and do not fall in the prohibitory clause of Section 497(1) Cr.P.C; the petitioner has no criminal record; no case is registered against him other than the present case; the case against the petitioner is of further inquiry; the complainant of the instant case has criminal record; the petitioner denies the recovery of CPU; the petitioner has been placed in Column No.3 of the Challan; the investigation has been completed; the forensic report of CPU does not connect the petitioner with the commission of the offence; the petitioner is behind bars for the last five months; during course of investigation, no incriminating material was recovered from the petitioner; hence the learned counsel urges the petitioner to be released on bail.

5. On the other hand, the learned Standing Counsel assisted by Mr Tariq Bilal, Legal Advisor FIA and Mr Shahid Majeed, Inspector FIA contended that; the petitioner is member of a gang, involved in fleecing innocent citizens by creating fake internet accounts; the petitioner was arrested red handed when he was about to receive the money; CPU recovered from the petitioner contains obscene videos. It is, however, admitted that there is no incriminating evidence in relation to the FIR nor any such material was recovered or mentioned in the forensic report. It is also admitted that Section 468 of PPC is not attracted in the present case; urges for dismissal of bail.

6. After giving careful consideration to the arguments of the learned counsels, finding of this Court are as follows:

7. The offences included in the FIR are admittedly, of the category which falls within the non-prohibitory clause of section 497 Cr.P.C. By now the law and principles for granting bail in such cases are well settled. It is important to note that in the case of *Zafar Iqbal Versus Muhammad Anwar and others (2009 SCMR 1488)*, a larger Bench of the Honourable Supreme Court has elucidated the principles for considering the grant of bail, where offences fall within the non-prohibitory clause. In the light of the said principles it has been held that where offences fall within the non-prohibitory clause, the granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Examples, though not exhaustive, of such extraordinary and exceptional cases have further been listed as follows:

i) Where there is likelihood of abscondance of the accused;
ii) Where there is apprehension of the accused tampering with the prosecution evidence;
iii) Where there is danger of the offence being repeated, if the accused is released on bail; and
iv) Where the accused is a previous convict.

8. It is admitted that no incriminating evidence or material was recovered from the CPU in relation to the facts mentioned in the FIR. It is also admitted that there is nothing on record which would attract the offence under Section 468 of PPC. Whether the CPU was recovered from the petitioner and his role in creating an internet account requires further probe. The offences other than Section 468 of PPC fall in the non-prohibitory clause of Section 497(1) of Cr.P.C. The prosecution has not been able to place any material on record which would bring the case of the petitioner within the exception to the general rule that in case of offences falling in non-prohibitory clause the grant of bail is to be considered favourably. The investigations qua the petitioner are complete. Keeping the

petitioner incarcerated in the present circumstances will not serve any beneficial purpose. This Court is, therefore, of the opinion that the petitioner is entitled to be released on bail.

9. In the circumstances as mentioned above, this petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Hundred Thousand) with one surety in the like amount to the satisfaction of learned Trial Court. If trial Court deems appropriate, amount may be deposited in cash to the satisfaction of learned trial Court.

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

(ATHAR MINALLAH)
JUDGE

Asad K/*

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