HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.519-B/2014

Muhammad Waheed Anwar
VERSUS
The State

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

11-09-2014 Ch. Abdul Aziz, advocate for the petitioner.
Malik Zahoor Ahmad Awan, Standing Counsel.
Mr Tehseen S.I. with record.

The petitioner Muhammad Waheed Anwar son of Muhammad Anwar has sought post arrest bail in case, F.I.R. No.138, dated 06-04-2014, registered under Sections 420, 468, 471, 467, 419, 34 of Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station Aabpara, Islamabad.

2. Brief facts as narrated in the FIR are that the case was registered on the complaint of Mansoor Ahmed S.I./C.I.A. It is alleged that he received spy information that gang was engaged in preparing bogus documents / files of Model Village Kurri Shehr at Liberty Market Aabpara, Sector G-6, and Sitara Market, Sector G-7 Markaz, Islamabad, upon which raiding party was constituted and raid was conducted. As a result whereof, Muhammad Waheed Anwar was arrested from Aabpara Market and bogus files being prepared by him alongwith other articles were recovered and taken into possession. Hence, this F.I.R.

3. Learned counsel for the petitioner contended that; the petitioner is in the business of stamp vending and issues stamp papers; he is running his business in a office located in the Aabpara Market, Islamabad; in the course of his business various people visit his office with their documents and some leave their

documents; during the raid 38 documents were taken into custody and the allegation is to the extent of six files; to the extent of only two allotment letters there is an allegation of forgery; the computer and scanner were also taken into possession and were sent for foreignsic test and the report as a result does not indicate the involvement of the offences; the documents were not prepared by the petitioner; one of the co-accused Mirza Saeed Akhtar Baig was granted bail by this Court vide order dated 21-08-2014 and, therefore, on the principle of consistency, the petitioner is also entitled to bail; offences in the light of the story narrated in the FIR are not invoked and do not fall in the prohibitory clause of Section 497(1) Cr.P.C; except for Section 467 of PPC, other offences fall in the non-prohibitory clause of Section 497 (1) Cr.P.C.; on the face of the story narrated in the FIR Section 467 of PPC is not attracted; the case has been made on the basis of documentary evidence; the petitioner is no more required for the purposes of investigation; the offences are non-cognizable and at the time of raid and registration of FIR permission from a competent Magistrate had not been obtained; the permission was subsequently obtained on 09-04-2014 and, therefore, the raid was without jurisdiction; the petitioner has no criminal record; no case is registered against him other than the present case; hence the learned counsel urges the petitioner to be released on bail.

4. On the other hand, the learned Standing Counsel contends that; the petitioner was arrested on the spot; forged stamp papers were recovered; some documents purportedly executed by CDA were found forged; one of the allottee has recorded a statement under Section 161 Cr.P.C. and other allottees are being pursued by the prosecution, relies on *2002 SCMR 132 and 2010 SCMR 855*.

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

6. The offences included in the FIR except Section 467 PPC 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.

7. The offences attracted fall within non-prohibitory clause except Section 467 PPC. The question as to whether ingredients of Section 467 of PPC are fulfilled, whether the documents were prepared by the petitioner to be used in a manner that would attract the offence, his role and involvement, calls for further probe. The petitioner does not have a criminal record as admitted by the prosecution. His continued custody is not likely to serve any beneficial purpose at this stage and the investigation to his extent has been completed. Nothing has been placed on record to form an opinion regarding apprehension of his absconding. The question as to the jurisdiction of the police regarding registration of the FIR and the raid without the permission of a Magistrate also requires further probe particularly when it is admitted that the raid was made and the FIR registered on 06-04-2014 while the permission from a Magistrate was obtained on 09-04-2014, such questions require further probe which are to be determined by

the trial Court. This Court is, therefore, of the opinion that the petitioner is entitled to bail.

8. 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.200,000/- (Rupees Two Hundred Thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

9. 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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