HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.520-B/2014

Nazim Hussain
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.

18-09-2014 Raja Gul Zaman, advocate for the petitioner.
Malik Zahoor Ahmad Awan, Standing Counsel.
Mr Abdul Jabbar Khan, S.I with record.

The petitioner Nazim Hussain son of Muhammad Sultan, has sought post arrest bail in case, F.I.R. No.485, dated 24-06-2014, registered under Sections 302, 201, 34 of the Pakistan Penal Code 1860 (hereinafter referred to as "PPC") at Police Station Margallah, Islamabad.

2. Brief facts, as narrated in the FIR, are that the complainant, who is the father of the deceased Aftab Khalil, reported that his son was enrolled as a student at the Institute of Chartered Accountants of Pakistan G-10/4, Islamabad. The complainant was informed on 24-06-2014 that the dead body of his son was found and that he was murdered. Hence the instant FIR.

3. The learned counsel for the petitioner contends; that the accused was arrested on 25-06-2014; the petitioner has been falsely implicated in this case; Section 302 PPC does not attract against the present petitioner, as per the story of the prosecution only Section 201 PPC is attracted; the petitioner is not nominated in the FIR; the case against the petitioner is one of further inquiry; the petitioner is innocent; during physical remand of the present petitioner no incriminating material has been recovered; the petitioner is previously non-

convict; investigation against the petitioner has been completed and Challan has been submitted in the trial Court, hence urges for the grant of bail.

4. The learned Standing Counsel accompanied by Abdul Jabbar Khan, SI, half heartedly contested the bail petition and contended that the petitioner was arrested in this case on suspicion and to his extent only offence under Section 201 PPC is attracted. It is admitted that during investigations nothing has been collected which will connect the petitioner to the offences mentioned in the FIR. Same is also reflected in the Challan.

5. After giving careful consideration to the arguments of the learned counsels and perusal of the record with their able assistance, the findings of this Court are as follows.

6. It is admitted that the only offence attracted to the extent of the petitioner is Section 201 of PPC. It is further admitted that his role in connection with the offence under Section 201 PPC calls for further probe. The petitioner has no criminal record let alone a conviction. The offence of Section 201 PPC falls under non-prohibitory clause. As the prosecution itself admits that the role of the petitioner even to the extent of Section 201 PPC calls for further proble, therefore, petitioner is undoubtedly entitled to bail.

7. The offence included in the FIR i.e. Section 201 PPC is, 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. 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.50,000/- (Rupees Fifty Thousand) with one surety in the like amount to the satisfaction of learned Trial Court.

09. 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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