HCJD/C-121

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO.572-B/2014

Zulfiqar Ali
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.
	15-10-2014	Mr Muhammad Atif Nawaz Khokhar, advocate for the petitioner. Malik Zahoor Ahmad Awan, Standing Counsel. Raja Asif Raza, SI FIA, Islamabad, with record.

The petitioner Zulfiqar Ali son of Bashir Ahmed has sought post arrest bail in case, F.I.R. No.154, dated 08-06-2013, registered under Sections 18-22 of Emigration Ordinance, 1979 and 6 of Passport Act, 1974, at Police Station FIA/AHTC, Rawalpindi.

2. Brief facts as narrated in the FIR are that the case was registered on the complaint of Ghulam Abbas, Muhammad Sohail and Fayyaz Hussain. It is alleged in the complaint that in the month of May, 2012, the petitioner received an amount of Rs.3,70,000/- from Fayyaz Hussain, Rs.2,00,000/- from Ghulam Abbas and Rs.1,80,000/- from Sohail Abbas alongwith their passports for sending them to Dubai for employment. Hence, this F.I.R.

3. Learned counsel for the petitioner contends that; the petitioner has falsely been implicated in the instant case; the offences under Sections 18 and 22 of the Emigration Ordinance, 1979 are not made out from the contents of the FIR; no specific date or time has been mentioned in the FIR regarding payment; the FIR has been registered against the petitioner with a delay of about one and a half year; the offence if any committed by the petitioner does not fall within the prohibitory clause of Section 497 Cr.P.C.; the petitioner is behind the bars and no more required for further investigation; there is no witness of the alleged

occurrence; the alleged agreement regarding receipt of alleged payment is denied; 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. Learned counsel relies on *2009 P.Cr.L.J. 497, 2013 YLR 2644, 2014 P.Cr.L.J. 297 and 2014 P.Cr.L.J. 429.*

4. On the other hand, the learned Standing Counsel contends that; the petitioner has received a huge amount from the complainants; the petitioner is fully involved in the commission of offence with a specific role; there are five witnesses who have submitted their affidavits regarding the receipt of money in the presence of witnesses; the Challan of the case has been submitted in the Court on 25-05-2014 and the trail against the petitioner is about to commence, relies on *2002 SCMR 1380 and 2010 SCMR 855* and urges dismissal of the bail petition.

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

6. The offences under sections 18 & 22 of Emigration Act, 1979, have been invoked in this case on the report of three complainants. The case is based on an agreement alleged to have been executed by the petitioner on 27-09-2012. The FIR was registered on 08-06-2013 i.e. more than a year after the execution of the alleged agreement, which according to the learned counsel for petitioner, is denied. Bare perusal of the alleged agreement reveals that it was agreed between the parties that after 04-10-2010 the petitioner shall return the money received. The amount alleged to have been received is denied by the petitioner. The prosecution also admits that there is no documentary evidence except statements recorded under section 161 of Cr.P.C and the agreement dated 27-09-2012 as it is alleged that the payment was made in cash. In order to attract the offences under sections 18 and 22, there has to be incriminating evidence,

inter alia, of "fraudulent inducement" and "payment received". The questions as to whether ingredients of these sections are fulfilled, whether the agreement dated 27-09-2012 was executed by the petitioner, whether he fraudulently induced the complainants and whether the payment was received, calls for further probe. Moreover, offence under Section 6 of the Passport Act, 1974 does not fall within the prohibitory clause of Section 497 Cr.P.C. The delay in registering the FIR for more than a year from the date of occurrence also requires probe. The petitioner does not have a criminal record except the present case. The petitioner is incarcerated for the last about five months. His continued custody is not likely to serve any beneficial purpose at this stage as the investigation has been completed. Nothing has been placed on record to form an opinion regarding apprehension of absconding of the petitioner. The cases cited at the Bar by the learned Standing Counsel are distinguishable in so far the facts and circumstances of the present petition are concerned. This Court is, therefore, of the opinion that the petitioner is entitled to bail.

7. 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. However, unless exempted by the trial court, the petitioner shall appear on each hearing before the trial court and in case this condition is violated the bail granted could be recalled if deemed appropriate by the trial court.

8. 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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