

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Cr.Revision Petition No.206-A/2021.

Date of Institution 16.08.2021.

Date of Decision 14.09.2021.

Muhammad Aasim s/o Muhammad Hanif, R/O House No.SA-1009-A, Street No.5 Rasheed Colony Sadiqabad, District Rawalpindi.

Petitioner-Accused.

VERSUS

1. The State through Additional Advocate General.
2. Aamir Yaseen s/o Muhammad Yaseen, Caste Jatt, R/O Chowk Sahiban, Tehsil Doliah-Jattan, District Kotli.

Respondents.

**REVISION PETITION AGAINST THE IMPUGNED  
ORDER OF ADDITIONAL SESSIONS JUDGE MIRPUR  
DATED 02.08.2021.**

**Before:- Justice Sadaqat Hussain Raja, C.J.**

**PRESENT :**

Raja Inamullah Khan, Advocate, for Petitioner-Accused.

Mr. Babar Ali Khan, Advocate, for Complainant.

Mr. Khursheed Anwer Mughal, Asst.A.G for State.

**ORDER: -**

The above titled revision petition has been directed against the impugned order of Additional Sessions Judge, Mirpur, dated 02.08.2021, whereby

post arrest bail was refused to the petitioner.

2. The precise facts leading to the filing of the instant revision petition are that Aamir Yaseen, complainant, on 06.07.2021, moved an application before SSP Mirpur for registration of case against petitioner as well as co-accused Mallick Asif Mahmood on the ground that he is Director of "Yaseen Akram Associates Private Limited Company" situated in Plot No.T-04 New Industrial Estate, Mirpur and the said Company runs business of LPG, however, besides him, his brother Shahnawaz Yaseen, mother Fareeza Begum and sister-in-law Sobia Noreen w/o Shahnawaz Yaseen, are also Directors and Chief Executive of the said Company, whereas Muhammad Aasim, accused, is employed as Accountant in the aforesaid Company, who alongwith Mallick Asif, in connivance with Deputy Registrar

Companies, prepared fictitious special resolution about transfer of shares, fake resignation and transfer deed, and have transferred whole shares in their names. On the application of the complainant, a case bearing No.148/2021, in offences under sections 419, 420, 465,468, 471 & 34,APC, was registered against petitioner and co-accused-persons, on 12.07.2021, at Police Station City, Mirpur. After registration of the case, Muhammad Aasim, petitioner-accused, was apprehended, who applied for post arrest bail in the Court of Civil Judge, Mirpur on 14.07.2021, which has been declined vide order dated 17.07.2021. Thereafter, he approached the Additional Sessions Judge Mirpur on 26.07.2021, but his prayer was declined, vide impugned order dated 02.08.2021; hence, the instant revision petition.

3. Raja Inamullah Khan, the learned counsel for the petitioner-accused contended that the Court below did not

apply its judicial mind while delivering the impugned order because Shahnawaz Yaseen is brother of complainant, who personally appeared before concerned officers and got transferred shares and account of the aforesaid company in the name of petitioner and received payment as a seller. He further contended that without biometric confirmation, no account could be altered; hence, it is proved that the disputed company was sold out to petitioner by Shahnawaz Yaseen, in this manner, the case of petitioner requires further inquiry and it is settled principle of law governing the bail matter that when a case comes in the ambit of further inquiry, the bail is granted to the accused. He agitated that petitioner-accused remained in the custody of investigation agency and he is no more required for further investigation; therefore, bail should not be withheld as a punishment. The learned

Counsel finally prayed that by accepting the instant revision petition and setting aside the impugned order dated 02.08.2021, the post arrest bail may be granted to the petitioner. In support of his arguments, the learned Counsel cited PLD 1995 SC 34.

4. Conversely, Mr. Babar Ali Khan, Advocate, the learned counsel for complainant controverted arguments of the learned Counsel for petitioner and contended that petitioner-accused prepared forged documents for transfer of whole shares of the company and did not pay a single penny to any Director of the company; hence, he committed non-bailable offences and his case falls within prohibitory clause of section 497, Cr.P.C; therefore, the Courts below did not commit any illegality while declining bail to the petitioner. He further contended that prosecution case is supported by the contents of F.I.R as

well as by the statements of P.Ws recorded under section 161, Cr.P.C; therefore, petitioner is not entitled to be released on bail. The learned counsel finally defended the impugned order on all counts and prayed for dismissal of revision petition.

5. Mr. Khursheed Anwer Mughal, the learned Assistant Advocate General appearing on behalf of State, fully owned and supported arguments advanced by the learned counsel for the complainant and submitted for dismissal of revision petition.

6. I have given my due consideration to the arguments of the learned Counsel for the parties and perused the record made available with care including the police diaries. It transpires from perusal of the police record that an F.I.R in offences under section 419, 420, 465, 468, 471 & 34, APC was registered

against accused-petitioner at police Station City Mirpur. The Courts below declined bail to the petitioner on the ground of incriminating material and ignored the principles enunciated by the Apex Court of Pakistan as well as Azad Jammu & Kashmir for refusing or granting bail in the offences not falling within the prohibitory clause of section 497, Cr.P.C. The offences mentioned in F.I.R against the petitioner do not fall within prohibitory clause of section 497, Cr.P.C; thus, attract the principle that grant of bail in such offences is a rule and refusal is an exception (as laid down in plethora of judgments, reported in PLD 1995 SC 34, PLD 1997 SC 545, 2002 SCMR 1997, 2009 SCMR 1488 & PLD 2017 SC 733, wherein, the Apex Court held that in such like cases grant of bail is a rule and refusal is an exception). The main purpose of detention of an under-trial accused is to secure his attendance

before trial Court or to protect and safeguard the society from any unpleasant act of accused or repetition of offence. The Hon'ble Supreme Court of Pakistan, in a case titled **Iftikhar Ahmad v. The State** (Criminal Petition No.529 of 2021 decided on 14.07.2021), has laid down principle for granting or refusing bail in the offences not covered by the prohibitory clause of section 497, Cr.P.C. The relevant extract is reproduced as under:-

"The main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society, if there is an apprehension of repetition of offence or commission of any other untoward act by the accused. Therefore, in order to make the case of an accused person fall under the exception to the rule of grant of bail in offences not covered by the prohibitory clause of Section 497(1), Cr.P.C, the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail. This Court

in the cases of "Tariq Bashir", "Zafar Iqbal" and "Muhammad Tanveer" has time and again illustrated such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of: (a) his abscondance to escape trial; (b) his tempering with the prosecution evidence or influencing the prosecution witnesses to obstruct with the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima-facie acted in the commission of offence alleged. A court which deals with an application for grant of bail in an offence not falling within the prohibitory clause of Section 497(1), Cr.P.C must apply its judicious mind to the facts and circumstances of the case and to the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offence only when it finds any of the above noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle."

(Underlining is mine)

A perusal of the aforesaid judgment of the Apex Court of Pakistan clearly indicates that the bail in offences not falling within prohibitory clause of Section 497, Cr.P.C can be refused, as an exception, under circumstances mentioned in the said judgment, by the Court dealing with the bail application when it finds any of the above quoted circumstances or other striking circumstance which impinges upon proceedings of the trial or poses a threat to the society, otherwise bail in the offences not covered by prohibitory clause of Section 497, Cr.P.C shall be granted as a rule. The Supreme Court of Pakistan in another case titled **Muhammad Tanveer v. The State** (PLD 2017 SC 733) observed that the principle laid down in this case regarding grant or refusal of bail in offences not falling within the prohibitory clause of section 497, Cr.P.C should be followed by the Courts in

letter and spirit because decisions of August Court are binding on all Courts. The relevant observation is reproduced as under:-

"Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C shall be a rule and refusal shall be an exception then, the Court of the Country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts through the country including the special tribunals and special Courts."

The Apex Court further observed in the aforesaid judgment at page 738 as under:-

"We expect the Courts below to adhere to these binding principles in future and not to act mechanically in the matter of granting or refusal of bail because liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach."

7. It is significant to observe here that the Hon'ble Supreme Court of Azad Jammu and Kashmir observed in a case titled **Riaz Ahmad v. Amin Baig etc** [PLD 1978 SC (AJ&K) 161] that decisions of the Supreme Court of Pakistan have binding force on the Courts in Azad Jammu & Kashmir. The observation made by the Apex Court of AJ&K is as under:-

"These observations of their Lordships of the Supreme Court of Pakistan apply to the facts of the present case with equal force. High Court of Azad Jammu & Kashmir in its judgments has often observed that the decisions of the Supreme Court have binding force on Courts in Azad Kashmir but it is regretted that some of the observations of their lordships of the Supreme Court of Pakistan have not been receiving due attention by Azad Jammu & Kashmir High Court which, on question of procedure are very much illuminative and provide a correct guidance."

The same view was reaffirmed by the Apex Court of Azad Jammu & Kashmir in case

titled **Ch. Muhammad Aziz v. Faisal Mumtaz Rathore & 15 others** (2015 SCR 159).

8. A bare reading of the afore quoted precedents of the Apex Court of Azad Kashmir reveals that the decisions of the Supreme Court of Pakistan are binding on all the Courts in Azad Jammu & Kashmir, except the Supreme Court of AJ&K. Thus, I would like to observe that the principles enunciated by the Hon'ble Supreme Court of Pakistan in its judgments should be strictly followed by all Courts of the State, except the Supreme Court of AJ&K, while deciding any relevant case. Hence, the principle laid down by the Apex Court of Pakistan regarding grant or refusal of bail in offences not falling within the prohibitory clause of Section 497, Cr.P.C shall be binding upon this Court and the instant bail matter is to be decided while keeping the aforesaid principle in sight.

9. In the instant case, according to F.I.R, allegation against petitioner-accused is that he prepared forged documents and got transferred whole shares of the company of complainant, namely, "Yaseen Akram Associates Private Limited Company" situated in Plot No.T-04 New Industrial Estate Mirpur, in his name. A cursory perusal of the statements of P.Ws. recorded under section 161,Cr.P.C reveals that accused-petitioner has been alleged to transfer whole shares of the aforesaid company, however, as per incomplete challan report, petitioner's version is that he purchased company from Shahnawaz Yaseen, brother of complainant and it has been incorporated in the challan that Shahnawaz Yaseen prepared the documents to transfer the shares to the petitioner. In such state of affairs, when two contradictory versions are part of the record, the case of petitioner certainly

is one of further inquiry falling within the ambit of section 497, Cr.P.C. Moreover, all the offences mentioned in F.I.R against the petitioner do not fall within prohibitory clause of section 497, Cr.P.C; thus, while considering the relevant precedents and circumstances, I am inclined to grant bail to petitioner-accused.

10. The crux of above discussion is that by accepting the instant revision petition, petitioner-accused is granted bail in sum of Rs.5,00,000/- (Five lac) with two local sureties in like amount to the satisfaction of the concerned trial Court, in the offences mentioned in F.I.R as well as in incomplete challan submitted there under. If the needful is done, the petitioner-accused shall be set-free forthwith provided not required in any other case or offence. However, the observation made in the instant order

shall not prejudice the case of either  
party at trial.

Muzaffarabad,  
14.09.2021. (RAH) .

-Sd-  
**CHIEF JUSTICE**