



**REPORTED JUDGMENTS  
OF  
HONOURABLE CHIEF JUSTICE  
MR. JUSTICE MUHAMMAD YAWAR ALI**

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**MR. JUSTICE MUHAMMAD YAWAR ALI**  
**Chief Justice, Lahore High Court, Lahore**  
*(February 07, 2018 to October 22, 2018)*

**Judge, Lahore High Court, Lahore**  
*(February 19, 2010 to February 06, 2018)*

The Hon'ble Chief Justice, Mr. Justice Muhammad Yawar Ali was born on October 23, 1956 in Lahore. The Hon'ble Chief Justice Mr. Justice Muhammad Yawar Ali benefited and learnt a lot from his father late Justice Muhammad Yaqoob Ali who played an active role during the Independence Movement, throughout remained a loyal supporter of Muhammad Ali Jinnah, founder of Pakistan and ultimately arose to the office of Chief Justice of Pakistan. The Hon'ble Chief Justice Mr. Justice Muhammad Yawar Ali passed his O-Level & A-Level from Aitchison College, Lahore in 1972 & 1974 respectively, got his B.A. from the University of the Punjab, Lahore in 1976, completed his LL.B (Honours) from Leeds University, United Kingdom in 1979 and qualified as Barrister-at-Law from Middle Temple United Kingdom in 1980. He then started his professional career and was enrolled as an advocate lower court & the advocate High Court in 1980. He continued his journey and was enrolled as an advocate Supreme Court of Pakistan in 1986.

Mr. Justice Muhammad Yawar Ali also lectured at the Punjab University Law College, Lahore as a visiting faculty member during earlier years of his practice. His lordship pleaded several cases of public importance before the High Courts, the Supreme Appellate Court and the Supreme Court of Pakistan, while representing various clients including WAPDA, PIA, Pakistan Railways, National Bank of Pakistan, Muslim Commercial Bank Limited and the Federal Government as counsel. He also served as Federal Counsel for Government of Pakistan; Additional Advocate General for Government of the Punjab from 26.03.1995 to 01.08.1997; Deputy Attorney General for Pakistan from 01.08.1997 to 07.06.2006 and again 10.08.2007 to 11.02.2008.

Prior to elevation to the Bench, a few of his lordship's important cases reported in leading law journals were PLD 1996 SC 152; PLD 1996 SC 274; 1996 MLD 01; 1996 PLC (CS) 678; PLD 1995 SC 546; 1996 SCMR 1510; 1999 SCMR 2744; 2005 SCMR 445 & 2008 SCMR 1377. He also has credit of having a publication titled "the Effect of Revolutions on the Legal Order within States" published in 1999.

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**2010 M L D 1159**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**BASHIR AHMAD---Appellant**

**Versus**

**THE STATE---Respondent**

Criminal Appeals Nos. 797, 798 and 799 of 2008, decided on 9th April, 2010.

**Penal Code (XLV of 1860)---**

----Ss. 420/468/471/109---Prevention of Corruption Act (II of 1947), S.5(2)---Criminal Procedure Code (V of 1898), Ss.164 & 412---Cheating, forgery and corruption---Appreciation of evidence---Accused who appeared before the Senior Special Judge Anti-Corruption, made a confessional statement so that the Trial Court would take a lenient view in the matter---Impugned judgment showed that the Trial Court apprised the accused that statement confessing his guilt would be used against him for purpose of recording of conviction---Record showed that accused had deposited amount in the government treasury, almost a month after the conviction having been recorded against him which had shown that accused had accepted his conviction and his appeal was nothing, but an afterthought---Accused, in circumstances, was not entitled to challenge the legality of his conviction by virtue of bar contained in S.412, Cr.P.C.--  
-Once a conviction was recorded by a court of competent jurisdiction on basis of plea of guilty, an appeal would only be maintainable in respect of sentence that was imposed, while in the present case, no objection with regard to severity of the sentence had been taken--Appeal was dismissed.

Executive District Officer Education Rawalpindi v. Muhammad Younas 2007 SCMR 1835; Muhammad Anwar and others v. The State 1986

PCr.LJ 2164; Nawab Ali alias Nawab v. The State PLD 1972 Lah. 532 and Shafi Muhammad Magsi v. The State 2001 YLR 1917 rel.

Aftab Mustafa for Appellant.

Aamir Asif Ranjha, Deputy Prosecutor-General Punjab for the State.

Date of hearing: 31st March, 2010.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---This judgment will dispose of Criminal Appeal Nos. 797, 798 and 799 of 2008 as common questions of law and facts are involved in these appeals.

2. This appeal is directed against order of Senior Special Judge, Anti-Corruption, Punjab, Lahore, dated 17-6-2008, wherein, the appellant was fined Rs.5000 along with a direction that salary drawn amounting to Rs.85303 be deposited in the Government treasury and in default of payment of fine undergo a sentence of S.I. for three months.

3. Brief facts of the case are that F.I.R. bearing No.5 of 2006 dated 7-4-2006 for offence under sections 420/468/471/109, P.P.C. read with section 5(2) 47 of Prevention of Corruption Act, was registered at Police Station ACE, Pakpattan, against the appellant and four others. While the trial was in progress, the appellant recorded a statement on oath before Senior Special Judge Anti-Corruption, Punjab, Lahore, which is re-produced below:--

"I have been defrauded by certain swindler, who tempted me to get the job against certain payment of amount, which I did pay to him and he, on his own, prepared certain fake documents relating to my educational qualification, which later on proved, as



per version of the prosecution. I admit the guilt and leave myself at the mercy of the Court".

4. Learned counsel for the appellant has argued that the impugned judgment passed by Senior Special Judge, Anti-Corruption, Punjab, Lahore, dated 17-6-2008, is liable to be set aside on the grounds that it has been passed without due application of mind; that statement of the accused could not have been recorded on oath and is violative of sections 164 and 364, Cr.P.C. and that a direction issued for deposit of salary drawn by him to the tune of Rs. 85303 is against the law as enunciated by the apex Court in case "Executive District Officer (Education), Rawalpindi Muhammad Younas" (2007 SCMR 1835).

5. The appellant also filed an affidavit in this Court, dated 12-9-2007, wherein, it is stated that the appellant did not make any confessional statement before Senior Special Judge Anti-Corruption, Punjab, Lahore.

6. Learned D.P.G. has controverted all the arguments addressed by the learned counsel for the appellant and has stated that the appellant after having made a confessional statement before the trial Court cannot be allowed to resile from the same.

7. Arguments have been heard and record perused.

8. The appellant who appeared as an accused before Senior Special Judge Anti-Corruption, Punjab, Lahore, made a confessional statement so that the trial Court would take a lenient view in the matter as indeed has been done in this case. In the impugned judgment it is clearly written that the trial Court apprised the appellant that the statement confessing his guilt would be used against him for purpose

of recording of conviction. The appellant after pondering over the matter on oath reiterated his confessional statement. A perusal of record would show that the appellant deposited a sum of Rs.5000 on 15-7-2008 in the government treasury, almost a month after the conviction having been recorded against him. This shows that he had accepted his conviction and present appeal is nothing but an afterthought.

9. It is trite law that the appellant is not entitled to challenge the legality of his conviction by virtue of bar contained in section 412 of Code of Criminal Procedure, as has been held in cases "Muhammad Anwar and others v. The State" (1986 PCr.LJ 2164), and "Nawab Ali alias Nawab v. The State" (PLD 1972 Lahore 532). Once a conviction is recorded by a Court of competent jurisdiction on basis of a plea of guilty, an appeal would only be maintainable in respect of sentence that was imposed, as has been held in case "Shafi Muhammad Magsi v. The State" (2001 YLR 1917). In the present appeal, no objection with regard to severity of the sentence has been taken.

10. In this view of the matter, there is no merit in this appeal and the same is dismissed.

H.B.T./B-7/L Appeal dismissed.

**2010 M L D 1292**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**PARVEEN AKHTAR---Petitioner**

**Versus**

**EX-OFFICIO JUSTICE OF PEACE and others---Respondents**

Writ Petition No. 4823 of 2010, decided on 3rd June, 2010.

**Criminal Procedure Code (V of 1898)---**

----Ss. 22-A & 154---Constitution of Pakistan (1973), Art.199---  
Constitutional petition---Application for registration of criminal case---  
Dismissal of application---Ex-Officio Justice of Peace relying on report of  
S.H.O. dismissed application of petitioner for registration of criminal  
case against respondents---Petitioner had impugned order of Ex-Officio  
Justice of Peace in constitutional petition---Record had revealed that  
there was a factual controversy which could not be resolved by High  
Court under constitutional jurisdiction---Petitioner had alternate remedy  
for filing of private complaint before a court of competent jurisdiction,  
which was an efficacious remedy and since the petitioner had not  
availed it, petition under Art.199 of the Constitution was not competent-  
--Petition was dismissed.

Allah Ditta v. Additional Sessions Judge, Khushab and 12 others 2008  
PCr.LJ 908; Mst. Malka Jan v. Inspector-General of Police, N.-W.F.P.  
Peshawar and 2 others 2000 PCr.LJ 320; Maulvi Shahzado Dreho v. Khalid  
Mahmood Soomro and others 2003 PCr.LJ 319; Saeed Ahmad and others  
v. Naseer Ahmad and others PLD 2000 Lah. 208; Col. Shah Sadiq v.  
Muhammad Ashiq and others 2006 SCMR 276 and Khizar Hayat and

others v. Inspector-General of Police (Punjab) Lahore and others PLD 2005 Lah. 470 ref.

M.M. Iqbal for Petitioner.

Muhammad Arif Gondal for Respondent No.3.

Syed Nayyar Abbas Rizvi, Asst.A.-G. with Bashir Ahmad, S.-I.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---This petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is directed against order, dated 25-2-2010 passed by Additional Sessions Judge/Justice of Peace, Mandi Bahauddin.

Briefly stated the facts of this case are that the petitioner filed a petition under section 22-A, Cr.P.C. alleging therein that her friend Mst. Bushra Parveen was subjected to zina-bil-jabr by respondents Nos.3 to 5. That a cognizable offence has been made out for registration of a criminal case against respondents Nos.3 to 5.

Learned Additional Sessions Judge/Ex-Officio Justice of Peace called for comments from the concerned S.H.O. who reported that the petitioner is a lady of ill-repute and the story as put forward in the petition under section 22-A, Cr.P.C. has been concocted. Learned Additional Sessions Judge/Ex-officio Justice of Peace, Mandi Bahauddin in the impugned order, dated 25-2-2010 dismissed the petition while relying on report which was submitted by the concerned S.H.O.

Learned counsel submits that a bare perusal of petition filed by the petitioner under section 22-A, Cr.P.C. reveals that a cognizable offence had been committed by respondents Nos. 3 to 5 and miscarriage of justice has been occasioned by respondent No.1 in not issuing a direction for

registration of a criminal case against respondents Nos. 3 to 5. That the concerned S.H.O. was duty bound to record the statement of the complainant and subsequently register an F.I.R. against the accused as provided in section 154, Cr.P.C. That blood samples, vaginal swabs and clothes worn by the victim are still lying in the hospital, since an F.I.R. has not been registered against the, accused. That any inquiry held by the concerned S.H.O. prior to registration of F.I.R. has no value in the eyes of law. Lastly it is submitted that filing of a private complaint is not an efficacious remedy. In support of his contentions learned counsel relies on "Allah Ditta v. Additional Sessions Judge, Khushab and 12 others" (2008 PCr.LJ 908), "Mst. Malka Jan v. Inspector General of Police, N.-W.F.P. Peshawar and 2 others" (2000 PCr.LJ 320), "Maulvi Shahzado Dreho v. Khalid Mahmood Soomro and others" (2003 PCr.LJ 319) and "Saeed Ahmad and others v. Naseer Ahmad and others" (PLD 2000 Lah. 208).

Learned law officer and learned counsel for respondent No.3 submits that no exception can be taken to impugned order dated 25-2-2010 passed by respondent No.1. That petitioner has alternate remedy of filing private complaint and since this has not been done this petition is liable to be dismissed.

It is trite that disputed questions of facts cannot be gone into this Court while exercising its extraordinary constitutional jurisdiction under Article, 199 of the Constitution of Islamic Republic of Pakistan 1973. A bare perusal of the record reveals that there is a factual controversy which cannot be resolved by this Court as has been held by the apex Court in Col. Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276. The petitioner has alternate remedy for filing of a private complaint before a Court of competent jurisdiction as has been held by the august Supreme Court of Pakistan in judgment, dated 9-9-2009 passed in

Civil Petition No.1398-L/2009 titled Rai Ashraf and others v. Muhammad Saleem Bhatti etc.

The arguments advanced by the petitioner that filing of a private complaint would not be an efficacious remedy is wholly without any substance. This aspect of the case was examined by a Full Bench of this Court in Khizar Hayat and others v. Inspector-General of Police (Punjab) Lahore and others PLD 2005 Lahore 470 wherein it was held that a person who files a private complaint is not at any disadvantage. It was held that "the impression entertained by a large section of the legal community in our country that in case of filing of a private complaint the accused person cannot be arrested and recovery cannot be effected from him is nothing but erroneous and fallacious". As such it can safely be said that filing of a private complaint before a court of competent jurisdiction is an efficacious remedy and since the petitioner has not availed of it the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not competent.

The upshot of the above discussion is that this petition has no merit and it is dismissed.

H.B.T./P-14/L Petition dismissed.

**2010 P Cr. L J 1340**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**Sh. NAVEEDUR REHMAN---Petitioner**

**Versus**

**THE STATE and 2 others---Respondents**

Writ Petition No. 5601 of 2010, decided on 16th April, 2010.

**Penal Code (XLV of 1860)---**

---S. 406---Criminal Procedure Code (V of 1898), Ss. 249-A & 265-K--  
Constitution of Pakistan (1973), Art. 199---Criminal breach of trust---  
Constitutional petition--Quashing of F.I.R.---Disputed question of facts  
could not be gone into by High Court while exercising its extraordinary  
Constitutional jurisdiction---If an offence had, prima facie, been  
committed, the same should be inquired into and tried by Trial Court---  
Inherent jurisdiction of High Court was not an alternative or additional  
jurisdiction---Accused had more than one alternative remedies before  
the Trial Court under the Code of Criminal Procedure i.e., under Ss.  
249-A, Cr.P.C. & 265-K, Cr.P.C.---Constitutional petition seeking  
quashing of F.I.R., therefore, was not competent---Quashing of F.I.R. in  
the case would amount to short circuiting the normal procedure of law  
in exercise of equitable jurisdiction, which was not permissible under  
the law---Constitutional petition was dismissed accordingly.

Col. Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276; Dr.  
Ghulam Mustafa v. The State and others 2008 SCMR 76; A Habib Ahmed v.  
M.K.G. Scott Christian and 5 others PLD 1992 SC 353and Haji Sardar  
Khalid Saleem v. Muhammad Ashraf and others 2006 SCMR 1192 ref.

Muhammad Sarwar Awan for Petitioner.

Rana Naveed Ashiq for Respondent No. 3/Complainant.

Syed Nayyar Abbas Rizvi, Assistant Advocate-General Punjab and Mian Makhdoom, A.S.-I. for the State.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks quashing of case F.I.R. No.329 of 2010 dated 14-03-2010 for offence under Section 406, P.P.C. registered at Police Station North Cantt. Lahore.

2. Learned counsel for the petitioner contends that bare reading of the F.I.R. would show that no case under Section 406, P.P.C. is made out, the cheques in question were not entrusted to the petitioner with regard to amount outstanding as mentioned in the F.I.R., that civil litigation is pending between the parties and the petitioner has filed a suit for recovery before lodging of F.LR, under Order XXXVII, Rules 1 and 2, C.P.C. which was decreed by the learned Additional District Judge Lahore on 5-4-2010. Lastly, it is submitted that F.I.R. was lodged to pre-empt the petitioner from pursuing his legal remedy.

3. Learned Law Officer and learned counsel for the complainant/respondent No.3 have opposed the petition and submit that Challan has been submitted before the Magistrate Section-30 Cantt. Lahore, on 31-3-2010. They further submit that once Challan has been submitted in a court of a competent jurisdiction, then only remedy available to the petitioner is to file an application under-section 249-A, Cr.P.C. for acquittal.

4. Arguments have been heard and record perused.



5. This petition raises disputed question of facts which cannot be gone into by this Court while exercising its extraordinary Constitutional jurisdiction as has been held by the august Supreme Court of Pakistan in case titled "Col. Shah Sadiq v. Muhammad Ashiq and others" 2006 SCMR 276.

6. It is trite that quashing of proceedings is not to be allowed for the reason that ordinary course of trial before the Court should not be allowed to be deflected through an approach to an inherent jurisdiction of High Court, as has been held by the Apex Court in case "Dr. Ghulam Mustafa v. The State and others" 2008 .SCMR 76. Prima facie if an offence has been committed, it should be inquired into and tried. If the accused is innocent he has a right to be honourably acquitted by the Trial Court. Inherent jurisdiction of High Court is not an alternative jurisdiction or additional jurisdiction as has been held by the august Supreme Court of Pakistan in case titled "A. Habib Ahmed v. M.K.G Scott Christian and 5 others" PLD 1992 Supreme Court 353. In any case an accused has more than one alternative remedies before the trial Court under the Code of Criminal Procedure that is under section 265-K and under section 249-A, Cr.P.C. Since an alternative remedy is then a petition seeking quashing of F.I.R. would not be competent. Quashing of proceedings in this case would amount to short-circuiting the normal procedure of law while exercising equitable jurisdiction which would not be in consonance with the law laid down by the Apex Court in case titled "Haji Sardar Khalid Saleem v. Muhammad Ashraf and others" 2006 SCMR 1192. The petitioner has a remedy of moving the trial Court for redress of his grievance.

7. Upshot of the above discussion is that there is no merit in the petition and it is dismissed.

N.H.Q./ N-32/L Petition dismissed.

**2010 P L C 237**  
**[Lahore High Court]**  
**Before Muhammad Yawar Ali, J**  
**SHAHID IQBAL**  
**Versus**  
**PUNJAB LABOUR APPELLATE TRIBUNAL through Chairman and 2**  
**others**

Writ Petition No.2298 of 2010, decided on 24th March, 2010.

**Industrial Relations Ordinance (XCI of 2002)---**

----Ss. 46 & 48---Constitution of Pakistan (1973), Art.199---Constitutional petition---Grievance petition---Dismissal of grievance petition for non-prosecution-Application for restoration of petition---Grievance petition filed by worker against order of his compulsory retirement, having been dismissed for non prosecution, petitioner filed application for restoration of said petition---Said application had concurrently been dismissed by the Labour Court and Appellate Court---Validity---Petition dismissed for non prosecution, could only be restored, if there existed "sufficient grounds" which would warrant its restoration---Record had shown that no grounds were available for setting aside order of the Labour Court wherein the grievance petition was dismissed for non-prosecution-Petitioner contended that he was ill and thus could not file application for restoration of grievance petition---Petitioner in his application seeking restoration of his grievance petition had neither mentioned the nature of his illness nor appended any medical certificate by a doctor to corroborate the same---Second ground raised by the petitioner that since the Labour Court had shifted its premises, it was not possible for him to have filed an application seeking restoration of his grievance petition in time, was also not tenable in law---Law favoured the vigilant and not the indolent

and there were no valid grounds for restoration of the petition---  
Constitutional petition was dismissed.

Sahib Khan and others v. Ghulam Dastgir and others 1980 SCMR 561(1) and  
Commissioner of Income Tax, v. Rais Pir Ahmad Khan 1981 SCMR 37 ref.

Tanveer Ahmed Ghumman for Petitioner.

Syed Nayar Abbas Rizvi, Asstt. A.-G. on Court's call.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**--- The petitioner filed a grievance petition under section 46 of the Industrial Relations Ordinance against an order of compulsory retirement passed by respondent No.2 which was dismissed on 11-7-2008 for non-prosecution. The petitioner being aggrieved filed an application for restoration of the petition and also appended with it an application under section 5 of the Limitation Act for condonation of delay. In the application moved for restoration of the petition it was stated that the petitioner fell ill and was also hampered in his efforts due to the fact that the premises of the Labour Court had been shifted from one place to another.

2. Application seeking restoration was dismissed by Presiding Officer of Punjab Labour Court No.1, Lahore, on 1-4-2009, on the ground that there were no sufficient grounds for restoration of the grievance petition.

3. The petitioner being aggrieved filed an appeal on 5-6-2009 before respondent No.1 which was also dismissed by order dated 4-9-2009 on the ground that the appellant/petitioner had filed an application for restoration of the grievance petition before Labour Court on 17-2-2009 after a period of more than seven months.

4. Learned counsel for the petitioner in this petition filed under Article 199 of the Islamic Republic of Pakistan, 1973, has argued that the petitioner

fell ill, the Labour Court shifted its premises and as such there existed good grounds for condonation of delay.

5. After hearing the arguments addressed by learned counsel for petitioner and going through the record it can safely be concluded that there were no grounds for setting aside order dated 11-7-2008 of the Labour Court, wherein, the grievance petition was dismissed for non-prosecution. The petitioner in his application seeking restoration of his grievance petition has neither mentioned the nature of his illness nor appended any medical certificate by a doctor to corroborate the same. The second ground raised by learned counsel for the petitioner that since the Labour Court had shifted its premises, it was not possible for him to have filed an application seeking restoration of his grievance petition in time is also not tenable in law. It is trite law that a petition which is dismissed for non-prosecution can only be restored if there exist "sufficient grounds" which would warrant its restoration. The apex Court in Sahib Khan and others v. Ghulam Dastgir and others 1980 SCMR 561(1) has held that any delay which is occasioned on account of the petitioner falling ill per se is not a good ground for condonation of delay. In any case, the petitioner had to explain delay of each and every day as held by the august Supreme Court of Pakistan in Commissioner of Income Tax, v. Rais Pir Ahmad Khan 1981 SCMR 37 which admittedly has not been done.

6. The respondent No.1 in the impugned order dated 4-9-2009 has rightly concluded that law favours the vigilant and not the indolent and that there were no valid grounds for restoration of the petition.

7. Upshot of the above discussion is that there is no merit in this petition and the same is dismissed in limine.

H.B.T./S-47/L Petition dismissed.

**P L D 2010 Lahore 443**  
**Before Muhammad Yawar Ali, J**  
**Messrs AMEER KHAN & CO.---Petitioner**  
**Versus**  
**GOVERNMENT OF THE PUNJAB through Secretary, Local**  
**Government, Lahore---Respondent**

Writ Petitions Nos.14964, 15583, 15244, 15837 and 15304 of 2010, heard on 16th July, 2010.

**(a) Constitution of Pakistan (1973)---**

----Art. 199---Constitutional petition---Maintainability---Contractual dispute---Principle---Routine contractual disputes between private parties are not to be scrutinized by High Court while exercising its extra ordinary constitutional jurisdiction under Art. 199 of the Constitution---Exception to such rule is that High Court has jurisdiction to examine a contract concluded by public functionaries which do not entail any factual inquiry--  
-Such contract is open to judicial review, as the same has to be just, fair, transparent and reasonable.

Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others 1998 SCMR 2268 ref.

**(b) Arbitration Act ( X of 1940)---**

----S. 39---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Judicial review, power of---Bar of proceedings---Scope---Bar of proceedings as envisaged under Arbitration Act, 1940, does not take away High Court's jurisdiction of judicial review in matters emanating from a contract concluded between private individuals and State functionaries.

Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others 1998 SCMR 2268 rel.

### **(c) Constitution of Pakistan (1973)---**

---Art. 199---Constitutional petition---Alternate and efficacious remedy--- Principle---Non-availing of remedy of statutory appeal---Validity---If High Court comes to the conclusion that appeal which has been provided in statute is not an efficacious remedy, Constitutional petition cannot be dismissed in circumstances.

Nagina Silk Mill, Lyallpur v. The Income Tax Officer, A-Ward Lyallpur and (2) The Income Tax Appellate Tribunal Pakistan and Nagina Silk Mill, Lyallpur v. The Income Tax Officer, A-Ward Lyallpur PLD 1963 SC 322; Lt.-Col Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Pakistan through the Secretary Ministry of Finance, Government of Pakistan PLD 1961 SC 119; Syed Ali Abbas and others v. Vishan Singh and others PLD 1967 SC 294; The Murree Brewery Co; Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others PLD 1972 SC 279 and Collector of Customs, Customs House, Lahore and 3 others v. Messrs S.M. Ahmad and Company (Pvt) Limited Islamabad 1999 SCMR 138 rel.

### **(d) Punjab Local Government Ordinance (XIII of 2001)---**

---Ss. 4 & 127---Punjab Local Government (Auctioning of Collection Rights) Rules, 2003, R. 3---Local government, functioning of---Principle--- All local governments are to function within the provincial frame work and adhere to federal and provincial laws---Local government cannot impede or prejudice the executive exercise of government---Local/district governments are bound by all policy decision taken by provincial government---Local government may collect provincial taxes within the local area as the government may direct and deposit the same in relevant government account.

**(e) Administration of justice---**

---Instructions---Past practice---Scope---Any instructions issued by public functionaries or past practice would not be a bar on law taking its own course.

Ikram Bus Service and others v. Board of Revenue, West Pakistan/The Regional Transport Authority Peshawar Region and Ittehad Transport Service Company Ltd PLD 1963 SC 564; Malik Muhammad Majeed v. Government of Pakistan PLD 2002 Lah. 290 and Commissioner of Income Tax and Wealth Tax, Sargodah Zone, Sargodha v. Messrs Irshad Anwar and Company 2002 PTD 750 rel.

**(f) Natural Justice, principles of ---**

---No one can be condemned unheard.

**(g) Punjab Local Government Ordinance (XIII of 2001)---**

---Ss. 4 & 127---Punjab Local Government (Auctioning of Collection Rights) Rules, 2003, Rr. 3 & 15---Constitution of Pakistan (1973) Art.199--  
-Constitutional petition---Collection of tax---Private parties---Petitioner was successful bidder for collection of transfer of immovable property tax--  
L-Grievance of petitioner was that authorities had restrained him from collection of tax in question---Validity---Auction of contract to a private contractor for collection of tax on transfer of immovable property was prohibited under proviso to Rule 3 of Punjab Local Government (Auctioning of Collection Rights) Rules, 2003---No contract for collection rights of any taxes, fees, rates, Bess and other levies of local government which could be raised against a specific person could be awarded to contractor---Collection of tax which could be raised against specific person and as such its collection rights could not be awarded to any contractor under any circumstances---Order passed by authorities was valid and

High Court declined to take any exception to the same--Petition was dismissed in circumstances.

Khawaja Saeed uz Zafar for Petitioner.

Syed Nayyer Abbas Rizvi, A.A.G., Punjab and Ch. Abrar Ahmed Asstt. Director Legal Local Government for Respondents.

Date of hearing: 16th July, 2010.

### **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---This judgment will dispose of Writ Petition No. 14964 of 2010, W.P. No. 15583 of 2010, W.P. No.15244 of 2010, W.P. No. 15837 of 2010 and W.P. No. 15304 of 2010 as common questions of law and fact are involved in all these matters.

Brief facts of the case necessary for the disposal of Writ Petition No. 14964-2010 are that the petitioner claims to be a contractor registered as category "A" for the year 2010-11 under rule 15 of Punjab Local Government (Auctioning of Collection Rights) Rules 2003. That respondent No. 2 placed an advertisement in Daily Newspaper "Express" Lahore dated 19-4-2010 for auction of collection rights of Tax on transfer of immovable property to be held on 7-5-2010 at 11:00 a.m. That the petitioner participated in the auction proceedings and being the highest bidder for an amount of Rs.2,87,10,000 was declared as a successful bidder and informed that contract for award of collection of tax on transfer of immovable property for the period on 1-7-2010 to 30-7-2011 has been awarded to him. That after completing all other formalities a work order was issued in favour of the petitioner on 30-6-2010. That on 30-6-2010 respondent No.1 issued a letter to All Administrators, Tehsil/Town Municipal Administrations in the Punjab and All Tehsil/Town Municipal Officers, Tehsil/Town Municipal Administrations in the Punjab, the operative part of which is reproduced below : -



"In pursuance of the provisions of Rule 3 of the Punjab Local Government (Auctioning of Collection Rights) Rules 2003 that prohibits award of collection rights to a local government in respect of contract for collection of an income including water rate, building fee, commercialization charges, sanitation fee, licence fee and lighting rate or arrears of the income, demand for which can be raised against a specific person and its arrears can be carried forward communicated earlier vide letter No. S.O. Tax (LG)2-253/97, dated 6-11-2007, collection of Tax on transfer of Immovable Property shall henceforth be recovered exclusively through the departmental mode. Under no circumstances whatsoever can any local government resort to auctioning of collection rights in respect of the subject tax.

All the administrators of District Governments/TMAs shall ensure strict compliance with the above instructions which have been issued after approval by the Chief Minister. Necessary measures should be taken at the local council level to ensure that the collection of TTIP is effected in an efficient and transparent manner. Special measures should also be put into place to prevent embezzlement/misappropriation of the collected amount on the part of the collecting staff."

The petitioner is aggrieved by the aforesaid order in consequence of which his contract stands rescinded.

The learned counsel for the petitioner assails the impugned order dated 30-6-2010 passed by respondent No.1 inter alia on the following grounds:-

- (i) That a contract once having concluded could not be rescinded unilaterally.
- (ii) That valuable rights which have accrued in favour of the petitioner have been taken away without providing any opportunity of hearing.

- (iii) That the impugned order dated 30-6-2010 militates against section 24-A of the General Clauses Act.
- (iv) That the impugned order dated 30-6-2010 passed by respondent No.1 is violative of Articles, 4, 8, and 10-A of the Constitution of Islamic Republic of Pakistan 1973.
- (v) That the principle of locus ponetentiae is pressed into service stating that once certain decisive steps have been taken after award of contract all that was done could not be undone and the contract could not be rescinded.
- (vi) That the impugned order dated 30-6-2010 passed by respondent No.1 is tainted with mala fide and has been passed in a colourable exercise of power so as to benefit certain nominees of a political party now in power in the Province of the Punjab.

The learned Law Officer as well as the learned Legal Advisor for respondents Nos.2 and 3 have vehemently opposed this petition on the grounds that it is not maintainable. The objections with regard to the maintainability of this petition are hereunder:

- (i) That no writ can be issued under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 for enforcement of a contract.
- (ii) That the instant petition would not be competent since the petitioner was bound to get the dispute resolved by means of arbitration as provided in the contract.
- (iii) That the petitioner has the right of filing an appeal before respondent No. 1 under section 190 of the Punjab Local Government Ordinance 2001. Since this petition has been filed without availing of an alternate remedy the same is liable to be dismissed forthwith.

On merits it has been argued that no contract could have been awarded by respondent No. 2 on account of the bar contained in Rule 3 of the Punjab Local Government (Auctioning of Collection Rights) Rules 2003 by virtue of which the local Government was not vested with any jurisdiction to auction of collection rights of tax on transfer of immovable property.

The preliminary objections taken by the respondents with regard to the maintainability of this petition are to be addressed in the first instance. There can be no cavil with the proposition that routine contractual disputes between private parties are not to be scrutinized by this court while exercising its extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. However, an exception to this rule would be that this court would have the jurisdiction to examine a contract concluded by public functionaries which do not entail any factual inquiry and it would be open to judicial review, since such contracts have to be just, fair, transparent and reasonable. Similarly, bar of proceedings as envisaged under the Arbitration Act, 1940 would not take away this court's jurisdiction of judicial review in matters emanating from a contract concluded between private individuals and State functionaries as has been held by the august Supreme Court of Pakistan in Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others 1998 SCMR 2268. Similarly the instant petition is not liable to be dismissed on the sole ground that the petitioners have not invoked the right of statutory appeal if this court comes to the conclusion that an appeal which has been provided in the statute is not an efficacious remedy in the circumstances of this case. An appeal against the impugned order passed by respondent No.1 according to the learned counsel for the respondents would lie before respondent No.1. The august Supreme Court of Pakistan in Nagina Silk Mill, Lyallpur v. (1) The Income Tax Officer, A-Ward Lyallpur, and (2) the Income Tax Appellate Tribunal Pakistan and Nagina Silk Mill, Lyallpur. v. the Income

Tax Officer, A-Ward Lyallpur PLD 1963 Supreme Court 322 has held that in cases of absence or excess of jurisdiction or where the impugned order is manifestly illegal, a writ would lie even though the petitioner has not availed of his right of filing a statutory appeal. In Lt.-Col Nawabzada Muhammad Amir Khan v. The Controller' of Estate Duty, Pakistan through the Secretary Ministry of Finance, Government of Pakistan PLD 1961 Supreme Court 119, the Apex Court stated in clear and unequivocal terms that this court could not entertain a writ petition when other appropriate remedy is yet available is not a rule of law barring the jurisdiction of the Court. The law as enunciated has been consistently followed by the august Supreme Court of Pakistan. In Syed Ali Abbas and others v. Vishan Singh and others PLD 1967 Supreme Court 294 and The Murree Brewery Co; Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others PLD 1972 Supreme Court 279, it was held that where an alternative remedy provided in law would not be efficacious and illusory a writ would lie against the impugned order even though the alternative remedy has not been availed. The august Supreme Court of Pakistan in Collector of Customs, Customs House, Lahore and 3 others v. Messrs S.M. Ahmad and Company (Pvt), Limited Islamabad 1999 SCMR 138 held as under:

"As regards the maintainability of writ petition in the presence of alternate remedy, it is a settled proposition of law that it is no bar if such remedy is only illusory in nature, as observed in Gulistan Textile Mills Ltd. v. Pakistan (1983 CLC 1474). No useful purpose would have been served if the respondent had been required to avail of the remedy of the appeal or revision because the highest body i.e. the C.B.R. had already expressed its opinion against the respondent. A reference may be made to Messrs Usmania Glass Sheet Factory Limited, Chittagong v. Sales Tax Officer, Chittagong (PLD 1971 SC 205) wherein it was observed that where a dispute arises between

the parties in respect of fiscal right based on a statutory instrument, it can be determined in writ jurisdiction. After the decision given by the C.B.R. it would have been difficult for the Federal Government to take a contrary view about the assessment/evaluation of the wood imported by the respondent, and in 'these circumstances no exception could be taken to the respondents invoking constitutional jurisdiction of the High Court. Classification of goods is not always a pure question of fact and being a mixed question of fact and law, the High Court is possessed of jurisdiction to adjudicate upon such question in constitutional jurisdiction in the light of dictum of the Supreme Court in M.Y. Khan v. M.M.Asalam and 2 others (1974 SCMR 196) and Messrs Delite House Ltd. v. Assistant Collector, Customs (1988 CLC 5).

Since the learned Law Officer has stated before this court that an appeal against the impugned order dated 30-6-2010 passed by respondent No.1 would lie before respondent No.1, it is held that it is not an efficacious remedy disentitling the petitioner from filing the instant petition.

In order to give a finding on the dispute in hand it would be efficacious and in the fitness of things to refer to Article 140-A of the Constitution of Islamic Republic of Pakistan 1973 providing for an establishment of a Local Government System which reads as under:--

"140-A. Each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments."

Now the local government is to run their affairs in accordance with the Punjab Local Government Ordinance 2001. Section 4 reads as follows:-

Section 4. Local Governments to work within Provincial framework.--

(1) The Local governments established under this Ordinance shall function within the Provincial frame work and adhere to the Federal and Provincial laws.

(2) In performance of their functions, the Local Governments shall not impede or prejudice the exercise of the executive authority of the Government."

Similarly section 127 reads as follows:--

Section 127. Relations of Government with the District Government.-

(1) The District Government shall carry out its decentralized functions in accordance with the provisions of this Ordinance and the rules made thereunder.

(2) The District Government shall collect such Provincial tax or taxes within its local area as the Government may direct and the District Government shall after the collection of such tax or taxes deposit the same in the relevant Government account.

(3) The Government may provide guidelines and render advice to the District Government through the concerned Zila Nazim for achieving the ends of Government policy and for promoting economic, social and environmental security of the Province."

A bare reading of the aforesaid provisions of the Punjab Local Government Ordinance, 2001 makes it crystal clear that all the local governments are to function within the provincial frame work and adhere to federal and provincial laws. Local Government cannot impede or prejudice the executive exercise of the government. Similarly, Local/District Government are bound by all policy decisions taken by the Provincial Government. They

may collect provincial taxes within the local area as the government may direct and deposit the same in the relevant government account. In the instant case respondent No.1 has laid down certain guidelines in pursuance of Rule 3 of the Punjab Local Government (Auctioning of Collection Rights) Rules 2003. Rule 3 of the Punjab Local Government (Auctioning of Collection Rights) Rules 2003 reads as follows:--

(3) Auction of Collection rights.---A Local Government may prefer to collect any of its income as specified in the Second Schedule of the Ordinance and duly approved and notified in the official Gazette, through contractor by awarding collection rights to him for period not exceeding one financial year.

(Provided that contracts of collection rights of such taxes, fees, rates, cesses and other levies of a Local Government, deemed of which can be raised against a specific person and arrears of which can be carried forward in his account, shall not be awarded to a contractor in any case)."

A bare reading of proviso to rule 3 reproduced above would show that Local Government has been restrained from awarding any contract to a private contractor for collection of Tax on transfer of immovable property.

The learned counsel for the petitioner has relied upon an order of respondent No.1 dated 28-5-2010 empowering the Tehsil Municipal Authorities to lease out collection rights of tax on transfer of immovable property. It is trite that any instructions issued by the public functionaries or past practice would not be a bar on law taking its own course. There can be no estoppel against statute as was held by the august Supreme Court of Pakistan in *Ikram Bus Service and others v. Board of Revenue, West Pakistan/The Regional Transport Authority Peshawar Region and*

Ittehad Transport Service Company Ltd PLD 1963 Supreme Court 564. A Division Bench of this Court in Malik Muhammad Majeed v. Government of Pakistan PLD 2002 Lahore 290 has also held that no "Agency" or "Authority" can be held bound by a promise or representation not lawfully extended or given. This Court in Commissioner of Income Tax and Wealth Tax, Sargodah Zone, Sargodha v. Messrs Irshad Anwar and Company 2002 PTD 750 has held that "a practice, howsoever old and consistent, could not in any case operate as estoppel against the prevailing law. Parties can neither vest jurisdiction in a statutory authority nor by agreement can divest it when it is available to him under the law."

There is no cavil with the proposition that no one can be condemned unheard, however, this principle would be of no avail to the petitioner in this case. A bare reading of proviso to Rule 3 of the Punjab Local Government (Auctioning of Collection Rights) Rules 2003 shows that it prohibits the auction of contract to a private contractor for collection of tax on transfer of immovable property. No contract for collection rights of any taxes, fees, rates, cesses and other levies of a Local Government which can be raised against a specific person can be awarded to a contractor. Collection of tax on transfer of immovable property is a tax which can be raised against a specific person and as such its collection rights cannot be awarded to any contractor under any circumstances. The order impugned in this petition is a valid order and no exception can be taken to it.

For what has been stated above, this petition along with other petitions referred to in the opening paragraph being without any merit stand dismissed.

M.H./A-168/L Petitions dismissed.



**2010 Y L R 2110**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**TANVIR ELAHI---Petitioner**

**Versus**

**THE STATE and others---Respondents**

Criminal Miscellaneous No. 5326-B of 2010, decided on 9th June, 2010.

**Criminal Procedure Code (V of 1908)---**

----S. 498---Penal Code (XLV of 1860), S.489-F---Dishonouring of cheque---Bail before arrest, grant of---Three cheques referred in the F.I.X. were issued on 4-11-2006, whereas the F.I.R. was lodged on 2-4-2010, after about 3-1/2 years---No plausible explanation was forthcoming for said inordinate delay---Record had revealed that cheques were dishonoured for the reason that rubber stamp of the company was not affixed and not for the reason of insufficient funds in the account of accused---Offence under S.489-F, P.P.C. did not fall within the prohibitory clause of S.497, Cr.P.C. and it carried a maximum punishment of three years---Ad interim pre-arrest bail already granted to accused, stood confirmed, in circumstances.

Mazhar Iqbal v. State 2006 YLR 406; Ali Murtaza v. State 2005 PCr.LJ 1773; Major Anwar ul Haq v. The State PLD 2005 Lah. 607; Shameel Ahmed v. The State 2009 SCMR 174; Seema Fareed and others v. The State and another 2008 SCMR 839; Muhammad Nadeem v. The State 2006 YLR 2006 YLR 3043; Muhammad Bakhsh v. The State 2006 YLR 23 and Ibrahim Ghulam Mustafa v. State 2007 PCr.LJ 1748 ref.

Ch. Sarfraz Ali Diyal for Petitioner.

Aamir Asif Ranjha, Deputy Prosecutor General.

Asad Manzoor Butt for Respondent No.2.

Asghar, A.-S.I. in person.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**--Through this petition filed under section 498, Cr.P.C., the petitioner seeks grant of bail before arrest in case F.I.R. No.341/2010 dated 2-4-2010 for an offence under section 489-F P.P.C. registered at Police Station Ghalib Market District Lahore.

2. It has been averred in the F.I.R. that the petitioner issued three cheques all dated 4-11-2006 in all valuing Rs.10,25,000 which bounced on being presented on 26-3-2007.

3. Learned counsel for the petitioner submits that the cheques referred to in the F.I.R. were not issued by the petitioner in his individual capacity rather those were issued by him as Director of a Company working under the name and style of "Taj Textile Mills Limited". That account is in the name of the Company and not in the name of the petitioner. That there is a genuine bona fide business dispute between the parties and a civil suit under Order XXXVII of the Code of Civil Procedure, 1908, has been filed by the complainant and is pending adjudication before the Trial Court. That cheques were issued as measure of security and the complainant knew that cheques referred to in the F.I.R. could not be encashed unless the official stamp of the company was affixed on those cheques. Lastly, it is submitted that two demand drafts favouring the complainant for the outstanding amount have already been received by the complainant. Learned counsel for the petitioner has placed reliance on Mazhar Iqbal v. The State 2006 YLR 406, Ali Murtaza v. The State 2005 PCr.LJ 1773 and Major Anwar ul Haq v. The State PLD 2005 Lahore 607.

4. Learned DPG opposes the petition and submits that considerations for grant of bail before arrest are different from considerations for grant of bail after arrest. That a bare reading of the F.I.R. would show that signatures of the petitioner on the cheques are admitted and he is guilty of having committed an offence under section 489-F, P.P.C.

5. After adopting the arguments of learned DPG, learned counsel for respondent No.2/complainant submits that Demand Drafts referred to by the learned counsel for the petitioner pertain to a different transaction and have nothing to do with the cheques referred to in the F.I.R. That civil and criminal proceedings can proceed side by side. In support of his contentions learned counsel relies on "Shameel Ahmed v. The State (2009 SCMR 174), "Seema Fareed and others v. The State and another" (2008 SCMR 839), "Muhammad Nadeem v. The State" (2006 YLR 3043), "Muhammad Bakhsh v. The State (2006 YLR 23) and "Ibrahim Ghulam Mustafa v. The State" (2007 PCr.LJ 1748).

6. There is an inordinate delay in filing of F.I.R. for which no plausible explanation is forthcoming. Three cheques referred to in the F.I.R. were issued on 4-11-2006 whereas the F.I.R. was lodged on 2-4-2010. In the instant petition it has been alleged by the petitioner that F.I.R. has been lodged by the complainant with mala fide intention and with ulterior motives. A perusal of record revealed that cheques were dishonored for the reason that rubber stamp of the company was not affixed and not for reasons of insufficient funds in the account of the petitioner.

7. It is an admitted position that offence under section 48-F, P.P.C. does not fall within the prohibitory clause and carries a maximum punishment of three years. The apex Court in case titled Tariq Bashir and 5 others v. The State PLD 2005 SC 34 has held that grant of bail in offences punishable with imprisonment for less than ten years is a rule

and refusal an exception. This petition is, therefore, allowed and the ad interim pre-arrest bail already granted to the petitioner vide order dated 21-5-2010 stands confirmed subject to his furnishing fresh bail bonds in the sum of Rs.11,00,000 with one surety in the like amount to the satisfaction of Trial Court.

H.B.T./T-26/L Bail confirmed.

**2010 Y L R 2272**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**DEPUTY INSPECTOR GENERAL OF POLICE and 2 others---**

**Petitioners**

**Versus**

**MUHAMMAD JAMSHAIID---Respondent**

Civil Revision No 928 of 2009, decided on 19th April, 2010.

**(a) Specific Relief Act (I of 1877)---**

---S. 8---West Pakistan Urban Rent Restriction Ordinance (VI of 1959), S.13--Ejectment of tenant---Disputed property was beyond the limits of Municipal Corporation--- Jurisdiction---Plaintiff filed suit for ejectment of tenant of disputed property on the ground of personal use and default in payment of rent---Trial Court passed an ejectment order---Appellate Court on appeal, remanded the case to Trial Court with observation that the disputed property was beyond limits of Municipal Corporation and Trial Court should decide the case as civil court and not as a Rent Controller--- Trial Court again decreed the suit without awarding the arrears of rent to the plaintiff---Appeal filed by defendants was dismissed by Appellate Court--Contention of the defendants was that the disputed property was beyond the limits of Municipal Corporation, Rent Controller could not have

jurisdiction in the matter---Validity---Record revealed that the Trial Court clearly stated that it was bound to try the suit as civil suit and not as a rent petition--Decree sheet had been drawn which had supported the contention that the Trial Court had decided the case as civil court and not as a Rent Controller---Defendants had failed to rebut the plaintiff's claim of ownership of disputed property acquired through sale-deed--Plaintiff stepped into the shoes of seller---Defendants had failed to point out any illegality, misreading or non-reading of evidence---Revision petition was dismissed by High Court.

Mubarik Ali and others v. Syed Ishaq Hussain Rizvi and others 1989 MLD 497; Syed Kamal Shah v. Inayat Muhammad and others 2002 CLC 1704; Abdul Mateen and others v. Mst. Mustakhia 2006 SCMR 50; Muhammad Bakhsh v. Ellahi Bukhsh and others 2003 SCMR 286 and Hakim-ud-Din through L.Rs. and others v. Faiz Bakhsh and others 2007 SCMR 870 ref.

**(b) Civil Procedure Code (V of 1908)---**

----O. XX, R.5---Judgment---Issues linked with each other---Effect--- Judgment which deals with all points raised, fulfils the requirements of law even though it may not have discussed each issue separately--- Where certain issues were inextricably linked with each other and those were considered together, such consideration would not be violative of the mandate of law.

Aziz Ullah Khan and others v. Gul Muhammad Khan 2000 SCMR 1647 and Muhammad Amir through L. Rs. v. Muhammad Sher and others 2006 SCMR 185 rel.

Syed Nayyar Abbas Rizvi, A.A.-G. for Petitioners.

Nazim Ali Awan for Respondents.

Date of hearing: 14th April, 2010.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---Both the learned counsel for the parties have no objection if this case be treated as "PACCA CASE" and decided on merits.

2. This Civil Revision filed under section 115, C.P.C. is directed against the judgment and decree dated 14-9-2009 passed by Additional District Judge Sialkot.

3. Briefly stated the facts of the case are that respondent filed a suit for possession seeking ejectment of tenant wherein it was stated that property measuring 1 Kanal bearing Khewat No.184, Khatooni No.530, Khasra No.1060/792 situated in Mouza Hamza Ghaus Tehsil and District Sialkot was owned by one Dr. Samee Ullah who had given the property on rent to the petitioners and after Dr. Samee Ullah expired, his legal heirs alienated it in favour of plaintiff / respondent. It was stated in the plaint that respondent/plaintiff required the property in question for his personal use and occupation and the petitioners/defendants were neither vacating it nor paying any E rent. The petitioners/ defendants denied the relationship of landlord and tenant and took the plea that disputed property belonged to one Mst. Saleema Bibi and they were paying rent to the original owner. The trial Court framed one issue which is as follows:--

"Whether relationship of landlord and tenant does exist between the petitioner and respondents? OPA.

4. After recording of evidence the trial Court exercising its powers as a Rent Controller accepted the claim of respondent/plaintiff and passed an ejectment order, which was challenged and learned Appellate Court remanded the case to the trial Court vide judgment dated 10-5-2008

with the observation that property in dispute was beyond limits of Municipal Corporation and the trial Court should decide the case as a Civil Court and not as a Rent Controller. After remand the trial Court framed six issues on 23-1-2009 which are as follows:

- (1) Whether defendants are wilful defaulter for the payment of rent? OPP.
- (2) Whether plaintiff is in need the suit property for his personal use? OPP.
- (3) Whether plaintiff is exclusive owner of the suit property and is entitled the decree for possession as prayed for? OPP.
- (4) Whether the instant suit is bad due to non-joinder of necessary parties? OPD.
- (5) Whether the defendants are tenant of one Mst. Saleema Bibi and as such the plaintiff has no cause of action? OPD.
- (6) Relief."

5. On 6-6-2009 the trial Court on the basis of its findings on issue No.3 held that petitioners (herein) are trespassers and suit of plaintiff/respondent for possession was decreed with costs. Both the parties assailed order of the trial Court dated 6-6-2009. The petitioners (herein) were aggrieved to the extent of order of ejectment and respondent (herein) was aggrieved as arrears of rent had not been awarded.

6. That learned Additional Sessions Judge Sialkot by a consolidated judgment and decree dated 14-9-2009 dismissed the appeal of the petitioners and accepted the appeal of the respondent.

7. Learned counsel for the petitioner contends that Rent Controller did not advert to and decide each and every issue separately and by so doing has caused miscarriage of justice. That the trial Court in its order dated 6-6-2009 has committed a material illegality by exercising its jurisdiction as a Rent Controller and not as a Civil Court. It is stated that caption of judgment dated 6-6-2009 after remand reads as under:--

"In the Court of Liaquat Ali Ranjha Rent Controller Sialkot"

and after the order being signed it reads 'Rent Controller'. Since the property was beyond the jurisdiction of Municipal Corporation, Rent Controller could have no jurisdiction in the matter and any ejectment order passed by a Rent Controller is not sustainable in the eyes of law. Learned counsel further submitted that petitioners were "tenants holding over" and both the Courts below have failed to take this important factor into consideration. Learned counsel for the petitioner in support of his contentions has relied on cases titled Mubarik Ali and others v. Syed Ishaq Hussain Rizvi and others 1989 MLD 497, Syed Kamal Shah v. Inayat Muhammad and others 2002 CLC 1704, Abdul Mateen and others v. Mst. Mustakhia 2006 SCMR 50, Muhammad Bakhsh v. Ellahi Bukhsh and others 2003 SCMR 286 and Hakim-ud-Din through L.Rs. and others v. Faiz Bakhsh and others 2007 SCMR 870.

8. Learned counsel for respondent has opposed the petition and contended that suit which was filed by respondent on 21-12-2005 was for possession of property and arrears of rent from July, 2005 onwards and this was a civil suit and not an ejectment petition in spite of the caption of the suit before "Senior Civil Judge/Rent Controller Sialkot," That petitioners/defendants while resisting the petition filed a written statement and not a written reply meaning thereby that they submitted to the jurisdiction of a Civil Judge and not before a Rent Controller. It was submitted that had



order of the Civil Judge dated 6-6-2009 been passed by trial Court in its capacity as Rent Controller no decree sheet would have been prepared. The decree sheet which was prepared in pursuance of order of the trial Court is dated 6-6-2009 and has been signed by the trial Court as a Civil Judge. That trial Court has first given a finding on issue No.3 and subsequently a finding on issues Nos.1, 2 and 5 followed by finding of issue No.4 as is evident from a plain reading of the trial Court dated 6-6-2009. That no miscarriage of justice has been caused by not giving findings on each and every issue separately. That petitioners (herein) have accepted the respondent as their landlord as is evident from a bare reading of cross-examination of D.W.2 and it is for this reason they cannot deny relationship of landlord and tenant. Lastly it is submitted that there is a finding of learned Additional District Judge Sialkot dated 14-9-2009 impugned herein to the effect that respondent has become exclusive owner of property as per sale-deed Exh.P.9 which so far remains unrebutted.

9. Arguments have been heard and record perused.

10. It was not incumbent on the trial Court to have adverted to, dilated upon and decided every issue separately.

Order XX, rule 5, C.P.C. reads as follows:

"5. Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

A judgment which deals with all points raised, fulfils the requirements of law even though it may not have discussed each issue separately. Where

certain issues were inextricably linked with each other and those were considered together, such consideration would not be violative of the mandate of law as has been held by the apex Court in cases titled Aziz Ullah Khan and others v.. Gul Muhammad Khan 2000 SCMR 1647 and Muhammad Amir through L.Rs. v. Muhammad Sher and others 2006 SCMR 185. A perusal of judgment of the trial Court dated 6-6-2009, reveals that the Civil Judge clearly stated that "This Court is bound to try the present suit as civil suit and not Rent Petition". In any case a decree sheet has been drawn and supports the contention that the trial Court decided the case as a Civil Court and not as a Rent Controller. The "Decree Sheet" accompanying the judgment of the trial Court dated 6-6-2009, carries the stamp and signatures of Civil Judge 1st Class. That Faizan Rasheed, Building Clerk DPO Office Sialkot D.W.2 admitted in his cross-examination that relevant record reveals that the petitioners received a notice from the respondent dated 20-10-2007, addressed to the DPO Sialkot that the respondent had purchased the property in question. The petitioners herein failed to rebut the respondent/plaintiff's claim to ownership of disputed property acquired through Sale-deed Exh.P.9. The respondent herein stepped into the shoes of DI. Samee Ullah and there is nothing on record to show otherwise. The respondent/plaintiff's claim that he needs the property for his personal use and occupation stands un rebutted.

11. The petitioners have not been able to point out any material illegality, misreading or non-reading of evidence and as such this petition is dismissed.

M.U.Y./D-6/L Petition dismissed.

**2010 Y L R 2418**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**Mst. ROBINA AKRAM---Petitioner**

**Versus**

**ADDITIONAL DISTRICT JUDGE and 2 others---Respondents**

Writ Petition No. 919 of 2008, decided on 25th May, 2010.

**Punjab Pre-emption Act (IX of 1991)---**

----S. 24---Constitution of Pakistan (1973), Art.199---Constitutional petition---Suit for pre-emption---Zar-i-Soam, non-deposit of within time--Plea of---Application for rejection of plaint---Order not challenged--Effect---Defendant neither impugned the order of Trial Court wherein an application for rejection of plaint on the grounds of non-deposit of Zar-i-Soam in time, was dismissed, nor the order wherein the time for deposit of Zar-i-Soam was extended---Defendant could not be permitted to challenge the same in constitutional petition before High Court---Constitutional petition was dismissed.

Mst. Zaira Khatoon v. Mst. Kishwar Jamal 2009 MLD 67; Shah Wali, v. Ghulam Din alias Gaman and another PLD 1966 SC 983 and Muhammad Din and others v. Jamal Din and others 2007 SCMR 1091 ref.

Sarfaraz Ahmed Cheema for Petitioner.

Syed Muhammad Shah for Respondent No.3.

Date of hearing: 7th May, 2010.

**JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**--This petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is directed against

the order, dated 12-9-2007 passed by respondent No.1/Additional District Judge Depalpur District Okara.

This case has a long chequered history. On 23-7-1998 respondent No.3 filed a suit for possession through pre-emption against the petitioner. There was a dispute with regard to the deposit of Zar-i-Soam. Both the parties kept litigating on this issue and eventually the plaintiff/respondent No.3 was directed to deposit Rs.8,00,000 as `Zar-i-Soam'. The respondent No.3/plaintiff once again submitted an application before respondent No.1 on 23-10-2006 praying that since time for deposit of `Zar-i-Soam' was not mentioned in the earlier order, therefore the same may be done to meet the ends of justice. The aforesaid application was accepted by respondent No.1 and the respondent No.3/plaintiff was directed to deposit "Zar-i-Soam" within a period of one month from the date of passing of the impugned judgment, dated 15-3-2006. The plaintiff/respondent No.3 deposited `Zar-i-Soam' before the trial Court on 13-4-2006 i.e. within one month of passing of judgment 15-3-2006. On 1-7-2006 the petitioner/defendant submitted an application before the trial Court on the grounds that `Zar-i-Soam' was deposited beyond the prescribed time period. The application after issuance of notice to the other side was dismissed vide order, dated 13-9-2006. The petitioner/defendant filed a revision petition against the order, dated 13-9-2006 which was dismissed by respondent No.1 vide impugned order, dated 12-9-2007.

Learned counsel for the petitioner submits that application, dated 22-3-2006 filed by respondent No.3 does not disclose under what provision of law it has been filed. The order, dated 15-3-2006 wherein revision petition of respondent No.3 was dismissed had attained finality and respondent No.1 had become functuous officio. The application before respondent No.1 was neither an appeal nor a revision or a review and as

such could not have been entertained by him. Learned counsel submits that a valuable right had accrued to the petitioner and miscarriage of justice has occasioned in as much as time for deposit of 'Zar-i-Soam' was extended without hearing the petitioner and the impugned order militates against all known norms of natural justice. In support of his arguments learned counsel places reliance on Mst. Zairha Khatoon v. Mst. Kishwar Jamal 2009 MLD 67, Rehmatullah and others v. Saleh Khan and others 2007 SCMR 729, Mst. Zulaikh Khatoon v. Ch. Muhammad Yasin and 5 others 2004 CLC 1443, Tayyab and others v. Falak Sher and others 2008 YLR 218, Akbar v. Muhammad Aslam and another 2005 YLR 221, Khurshid Akbar v. Mian Manzur Ahmed and another 1982 SCMR 824, Painsa Khan v. Member (Judicial-I) Board of Revenue, Punjab, Lahore and 4 others 1995 CLC 1816, Shah Wali v. Ghulam Din alias Gaman and another PLD 1966 SC 983 and Musthaq and others v. Land Acquisition Collector and others PLJ 1999 Lahore 756 (DB).

On the other hand learned counsel for respondent No.3 while opposing the petition submits that application, dated 22-3-2006 is to be taken as an application moved under section 152/153, C.P.C. wherein a Clerical or arithmetical mistake in judgments, decrees, orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Learned counsel further submits that on an application which was filed before Additional District Judge time was extended by him vide order, dated 22-3-2006 and if the petitioner was aggrieved by the said order he could have impugned the same before any higher forum. Lastly it is submitted that 'Zar-i-Soam' was in fact deposited well in time and this dispute infact pertains to an amount for an enhanced amount of 'Zar-i-Soam' and as such is not hit by section 24 of the Punjab Pre-emption Act, 1991. In support of his arguments learned counsel places reliance on Muhammad Din and others v. Jamal Din and others 2007 SCMR 1091

Shakeel Ahmad v. Abduil Ghaffar and others 2009 YLR 1384 and Muhammad Ashraf v. Ghulam Safdar 2009 YLR 1287.

The petitioner on 1-7-2006 filed an application before the trial Court wherein it was prayed that suit of the respondent No.3/plaintiff be dismissed on account of non-deposit of 'Zar-i-Soam' within time as envisaged by section 24 of Punjab Pre-emption Act, 1991. Respondent No.3/plaintiff took a plea that appellate Court in its order, dated 15-3-2006 did not set any time limit for deposit of 'Zar-i-Soam' and this mistake could have been corrected without issuing notice to the contesting party. The learned trial Court dismissed the application on the grounds that it had no jurisdiction to set aside or vary an order passed by an Additional District Judge. In a revision petition which was filed against the order, dated 13-9-2006, there is no prayer for setting aside of that order in fact the revision petition is directed against an order of respondent No.1, dated 22-3-2006. It may be pointed out that order, dated 22-3-2006 was never challenged before any higher forum and attained finality. The petitioner in the revision petition did not impugn the order of the trial Court, dated 13-9-2006 wherein an application for rejection of plaint on the grounds of non-deposit of 'Zar-i-Soam' in time was dismissed and the petitioner cannot be permitted to challenge the same at this stage. Similarly order, dated 22-3-2006 was never challenge before a Court of competent jurisdiction. No material illegality' or irregularity has been pointed out in the impugned order, dated 12-9-2007 passed by respondent No. 1.

The upshot of the above discussion is that there is no merit in this petition and it is dismissed.

M.U.Y./35/L Petition dismissed.

**PLJ 2010 Cr.C. (Lahore) 830**  
**Present: Muhammad Yawar Ali, J.**  
**BASHIR AHMED--Appellant**  
**versus**  
**STATE--Respondent**

CrI. Appeal No. 797 of 2008, decided on 9.4.2010.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 410--Criminal appeal--Once a conviction is recorded by Court of competent jurisdiction on basis of a plea of guilty, an appeal would only be maintainable in respect of sentence that was imposed. [P. 832] A

2001 YLR 1917, 1986 PCr.LJ 2164 & PLD 1972 Lah. 532, ref.

Mr. Aftab Mustafa, Advocate for Appellant.

Mr. Aamir Asif Ranjha, D.P.G. Punjab for State.

Date of hearing: 31.3.2010.

**Judgment**

This judgment will dispose of CrI. Appeal Nos.797, 798 and 799 of 2008 as common questions of law and facts are involved in these appeals.

2. This appeal is directed against order of Senior Special Judge, Anti-Corruption, Punjab, Lahore, dated 17.6.2008, wherein, the appellant was fined Rs.5000/- alongwith a direction that salary drawn amounting to Rs.85303/- be deposited in the Government treasury and in default of payment of fine undergo a sentence of S.I. for three months.

3. Brief facts of the case are that FIR Bearing No. 5 of 2006 dated 7.4.2006 for offence under Sections 420/468/471/109 PPC read with Section 5(2) & 47 of Prevention of Corruption Act, was registered at Police Station ACE, Pakpattan, against the appellant and four others. While the trial was in progress, the appellant recorded a statement on oath before Senior Special Judge Anti-Corruption, Punjab, Lahore, which is re-produced below: --

"I have been defrauded by certain swindler, who tempted me to get the job against certain payment of amount, which I did pay to him and he, on his

own, prepared certain fake documents relating to my educational qualification, which later on proved, as per version of the prosecution. I admit the guilt and leave myself at the mercy of the Court"

4. Learned counsel for the appellant has argued that the impugned judgment passed by Senior Special Judge, Anti-Corruption, Punjab, Lahore, dated 17.6.2008, is liable to be set aside on the grounds that it has been passed without due application of mind; that statement of the accused could not have been recorded on oath and is violative of Sections 164 and 364 Cr.P.C. and that a direction issued for deposit of salary drawn by him to the tune of Rs.85303/- is against the law as enunciated by the Apex Court in case "Executive District Officer (Education), Rawalpindi Vs. Muhammad Younas" (2007 S.C.M.R 1835).

5. The appellant also filed an affidavit in this Court dated 12.9.2007, wherein, it is stated that the appellant did not make any confessional statement before Senior Special Judge Anti-Corruption, Punjab, Lahore.

6. Learned D.P.G has controverted all the arguments addressed by the learned counsel for the appellant and has stated that the appellant after having made a confessional statement before the trial Court cannot be allowed to resile from the same.

7. Arguments have been heard and record perused.

8. The appellant who appeared as an accused before Senior Special Judge Anti-Corruption, Punjab, Lahore, made a confessional statement so that the trial Court would take a lenient view in the matter as indeed has been done in this case. In the impugned judgment it is clearly written that the trial Court apprised the appellant that the statement confessing his guilt would be used against him for purpose of recording of conviction. The appellant after pondering over the matter on oath reiterated his confessional statement. A perusal of record would show that the appellant deposited a sum of Rs.5000/- on 15.7.2008 in the Government treasury, almost a month after the conviction having been recorded against him.



This shows that he had accepted his conviction and present appeal is nothing but an after thought.

9. It is trite that the appellant is not entitled to challenge the legality of his conviction by virtue of bar contained in Section 412 of Code of Criminal Procedure, as has been held in case "Muhammad Anwar and others vs. The State" (1986 P.Cr.L.J. 2164), and "Nawab Ali alias Nawab vs. The State" (PLD 1972 Lahore 532). Once a conviction is recorded by a Court of competent jurisdiction on basis of a plea of guilty, an appeal would only be maintainable in respect of sentence that was imposed, as has been held in case "Shafi Muhammad Magsi vs. The State" (2001 Y.L.R. 1917). In the present appeal, no objection with regard to severity of the sentence has been taken.

10. In this view of the matter, there is no merit in this appeal and the same is dismissed.

(A.S.) Appeal dismissed.

**2011 C L C 205**

**[Lahore]**

**Before Sh. Azmat Saeed and Muhammad Yawar Ali, JJ**

**Syed ZAIDI HASSAN SHAH---Appellant**

**Versus**

**FAIZ-UR-REHMAN SHAH---Respondent**

R.F.As. Nos. 84 and 85 of 2010, heard on 3rd November, 2010.

**Civil Procedure Code (V of 1908)---**

---O. XXXVII, R.2---Suit for recovery of amount on the basis of pro note--  
--Plaintiff filed two separate suits for recovery of amount on the basis of  
pro note against two different defendants---Issues were framed and  
evidence was led by the parties---Trial Court, while passing judgment  
and decree reproduced the evidence recorded in one case verbatim in the  
other case---Effect---Evidence of one case could not be shifted verbatim  
to another case for rendering of a decision; it could not be said with  
certainty as to in which case the evidence was recorded and  
subsequently shifted verbatim to the other---Such a procedure would be  
totally alien to Civil Procedure Code, 1908 and could cause grave  
injustice and would militate against all known norms of natural justice--  
-Trial Court while seized of two different suits, had not given any special  
reason as to why evidence was recorded only in one case and shifted to  
another also--Impugned order was set aside and case was remanded for  
giving a fresh decision after affording an opportunity to both the parties  
for producing evidence.

Nazir Ahmad v. Mst. Ghazala Bashir 2001 CLC 468 and Malik Aman v.  
Haji Muhammad Tufail PLD 1976 Lah. 1446 ref.

Sheikh Naveed Shahryar for Appellant.

Malik Muhammad Rafique for Respondent.

Date of hearing: 3rd November, 2010.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---This judgment will also dispose of Regular First Appeal No. 85 of 2010 titled Syed Ameer Hassan Shah v. Faiz-ur-Rehman as common questions of law and fact are involved in both these matters.

2. Briefly stated the facts of the case necessary for the disposal of this appeal are that the respondent filed two separate suits one against the appellant and another against Syed Ameer Hassan Shah on 5-6-2007. A civil suit filed against the appellant under Order XXXVII, Rule 2 Civil Procedure Code 1908 on the basis of a 'Pronote' dated 23-6-2005 for recovery of a sum of Rs.9,50,000 was registered as Civil Suit No. 13 of 2008. Another civil suit filed against Syed Amir Hassan Shah under Order XXXVII, Rule 2 Civil Procedure Code, 1908 on the basis of a 'Pronote' dated 23-6-2005 for recovery of a sum of Rs. 9,50,000 was registered as Civil Suit No. 8 of 2008. That issues were framed and evidence was led by both the parties. The learned trial Court while relying on the evidence of the plaintiff/respondent (herein) decreed both the suits with costs by means of judgment and decree dated 19-12-2009.

3. The learned counsel for the appellant submits that miscarriage of justice has been occasioned by the learned trial Court while passing the impugned judgment and decree since evidence recorded on behalf of the parties in one case has been verbatim reproduced in the other. The learned counsel further submits that impugned judgment and decree dated 19-12-2009 is liable to be set aside on the ground that the same has been passed without due application of mind as evidence in one case has been shifted verbatim to the other case and it cannot be said with any certainty as to in which case the evidence was actually recorded.

4. The learned counsel for the respondent has opposed the appeal and submitted that no exception can be taken to the impugned judgment

and decree since the same has been passed after the pleadings of the parties and the evidence led by both the sides was taken into consideration. That the impugned judgment and decree does not suffer from any illegality or infirmity and hence not open to any exception.

5. A perusal of the evidence produced by both the parties in Civil Suit No. 13 of 2008 subject matter of the appeal (herein) and the evidence recorded in Civil Suit No. 8 of 2008 which forms subject matter of R.F.A. No. 85 of 2010 titled Syed Ameer Hassan Shah v. Faiz-ur-Rehman Shah would show that it is verbatim the same. A bare reading of the evidence recorded in both the cases would show that even a comma or full stop has not been changed. It is too much of a coincidence for evidence recorded in two separate suits to be one hundred percent identical. If evidence had been recorded separately in both the cases there would have been some difference between them. It is trite that the evidence of one case cannot be shifted verbatim to another case for rendering of a decision, such a procedure would be totally alien to the Civil Procedure Code as has been held by this court in Nazir Ahmad v. Mst. Ghazala Bashir 2001 CLC 468. After going through the evidence produced by the parties in Civil Suit which forms subject matter of this appeal and evidence as it appears in Civil Suit which forms subject matter of the dispute in R.F.A. No. 85 of 2010 it cannot be said with any certainty as to in which case the evidence was recorded and subsequently shifted verbatim to the other. Such a practice would cause grave injustice and would also militate against all known norms of natural justice as has been held in Malik Aman v. Haji Muhammad Tufail PLD 1976 Lahore 1446. The trial Court while seized of two different civil suits filed under Order XXXVII, Rule 2, C.P.C. had not given any special reason why evidence was recorded only in one case and shifted to another.

6. In this view of the matter, this Regular First Appeal is accepted, the impugned judgment and decree dated 19-12-2009 is set aside and the case

is remanded for giving a fresh decision after affording an opportunity to both the parties for producing evidence. Both the parties shall appear before the trial Court/Additional District Judge Mianwali Camp at Piplan on 22-11-2010 who will record fresh evidence of both the parties and finally decide the case within thirty (30) days after both the parties put in their appearance. Office is directed to transmit the record of the case to the learned trial Court.

H.B.T./Z-51/L Case remanded.

**2011 C L C 1803**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**USMAN YOUSUF and another----Petitioners**

**Versus**

**BAHAUDDIN ZAKARIYA UNIVERSITY through Vice-Chancellor and 3 others----Respondents**

Writ Petition No.8402 of 2011, decided on 13th July, 2011.

**Constitution of Pakistan---**

----Art. 199---Constitutional petition---Educational institution---Using unfair means in examination---Disqualification---Petitioners, who were found cheating while appearing for Annual Examination, were served with show-cause notice and were given a personal hearing by Disciplinary Committee---Petitioners were found to be guilty and were disqualified for 1st year (two chances); and from appearing in any university examination---No mala fide was proved on the part of invigilating staff to have registered a false and unfair means case against the petitioners---Petitioners had been given every opportunity to defend themselves---No leniency could be shown in such-like cases--- Constitutional petition was dismissed.

Azeem ul Haq Pirzada for Petitioners.

Malik M. Tariq Rajwana, Legal Advisor for Bahauddin Zakariya University, Multan.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**--- Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners seek setting aside of orders dated 2-6-2011 and 1-6-2011 issued by respondent No.3 whereby the petitioners who were students of Civil Engineering Department Bahauddin Zakariya University Multan were disqualified for one year from passing 2nd annual examination 2010 and from appearing in any University Examination till 1st Annual 2011 on account of unfair means case registered against the petitioners.

2. Briefly stated the facts of the case necessary for the disposal of this petition are that the petitioners were found cheating by the invigilating staff on 10-2-2011 while appearing in Paper CE-405 of Transportation Engineering B.Sc. Civil Engineering 7th Semester 2nd Annual Examination 2010. Prima facie the petitioners, were found guilty of giving and receiving assistance to each other in the Examination Hall in clear violation of Regulations Nos.12 and 13 of the University Calendar. The petitioners created disturbance in the Examination Hall and by so doing prima facie also violated Regulation No.18 of the University Calendar. On 28-2-2011 the petitioners were issued a show-cause notice and directed to submit their reply within ten days of the receipt of the show-cause notice. The petitioners submitted their reply and were also given a personal hearing by the Disciplinary Committee. On 30-5-2011 the Disciplinary Committee disqualified the petitioners for one year'(two chances) i.e. from passing 2nd annual examination 2010 and from appearing in any University Examination till 1st Annual 2011 by a unanimous decision.

3. The learned counsel for the petitioners submits that disciplinary proceedings initiated against the petitioners were tainted with mala fide.

The petitioners are brilliant students hence it can safely be presumed that they would never resort to cheating in any examination. No independent person has come forward in support of the allegations levelled against the petitioners. Personal hearing given to the petitioners was nothing but sham proceedings. The petitioners are innocent and never adopted any unfair means while appearing in the examination.

4. After going through the arguments addressed by the learned counsel for the petitioners, Legal Advisor for Bahauddin Zakariya University, Multan and perusing the record it is clear that the petitioners were found cheating while appearing for examination on 10-2-2011 in paper CE-405 of Transportation Engineering B.Sc. Civil Engineering 7th Semester 2nd Annual Examination 2010. The petitioners were served with a show-cause notice. After obtaining replies of the show-cause notice the petitioners were called and given a personal hearing by the Disciplinary Committee. By a unanimous decision the petitioners were found to be guilty and disqualified for 1st year (two chances) i.e. from passing 2nd annual examination 2010 and from appearing in any University Examination till 1st Annual 2011. There is no mala fide on the part of the invigilating staff to have registered a false and unfair means case against the petitioners. The petitioners have been given every opportunity to defend themselves. No leniency can be shown in such-like cases otherwise it would erode the sanctity of an examination held at the level of a University.

5. For what has been stated above, this petition being without any merit stands dismissed.

H.B.T./U-10/L Petition dismissed.

**2011 M L D 1894**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD ARIF---Petitioner**

**Versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No.1 of 2010 in Criminal Appeal No.595 of 2005, decided on 17th May, 2011.

**Criminal Procedure Code (V of 1898)---**

----S. 426---Penal Code (XLV of 1860), S.302(b)---Qatl-e-amd---Petition for suspension of sentence---Accused in his statement under S.342, Cr.P.C. had stated that the deceased tried to commit sodomy upon him and since he resisted, the deceased attacked him with a dagger, but in the scuffle which ensued, the deceased sustained an injury which ultimately caused his death---Accused had further stated that he fled from the scene of occurrence and subsequently he surrendered himself before the Police authorities---Said statement of accused did not inspire confidence---Deceased sustained a serious injury inflicted with a dagger which went deep into his body---Single injury going very deep into the body of the deceased, could not have been sustained by him, if he was grappling with accused and both of them were in very close proximity to each other---Both the eye-witnesses took the deceased in the hospital with the complainant swiftly---Eye-witnesses had no previous enmity with accused and would not have falsely deposed against him---Accused had committed a heinous offence by inflicting a serious injury with a dagger to the deceased---Bail was not to be allowed to a convicted person as a matter of right, moreso when he was guilty of having committed a heinous offence---After recording of conviction, the status of an "accused person" changed and the judgment of the Trial Court convicting him was not to be suspended in the absence of a glaring



illegality or a patent error which was apparent from the record---Minor discrepancies in the prosecution evidence, could not be the basis of suspending the sentence awarded to an accused---No detailed scrutiny of evidence and only a tentative assessment of evidence was to be made--Petition was dismissed.

Muhammad Amin alias Naeem v. The State 2005 YLR 1757 **distinguished.**

Rafique Ahmad alias Shika v. The State 2005 PCr.LJ 193 **rel.**

Sh. Dilawar Hussain for Petitioner.

Ch. Muhammad Akbar, Deputy Prosecutor General, Punjab.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Briefly stated the facts of the case necessary for the disposal of this petition filed under section 426, Cr.P.C. seeking suspension of sentence are that the petitioner was tried and convicted by the learned Sessions Judge Dera Ghazi Khan by means of judgment dated 5-8-2005 and sentenced to imprisonment for life under section 302(b), P.P.C. The petitioner was also sentenced to pay compensation of Rs. 1,00,000 to the legal heirs of the deceased under section 544-A, Cr.P.C. and in case of default to further undergo three years imprisonment. Benefit of section 382-B, Cr.P.C. was granted to the petitioner.

2. According to the prosecution case the complainant was running a confectionary shop along with his brothers Rashid Ahmed, Nisar Ahmed and Shakeel Ahmed. That on 6-2-2005 at about 4-00 a.m. the petitioner (accused person) a previous employee of the complainant came to the shop and inflicted a blow with a dagger to Rasheed Ahmed (deceased) hitting him below his chest and causing his death. The petitioner ran away from the shop while brandishing his dagger. The occurrence was witnessed by two brothers of the complainant namely Nisar Ahmed and Shakeel Ahmed.

Motive for the occurrence being the petitioner harboured a grudge against the deceased for throwing him out of service.

3. The learned counsel for the petitioner submits that a false case was registered against the petitioner by the complainant who is a rich and an influential person. The deceased wanted to commit sodomy with the petitioner and during a scuffle which ensued the deceased sustained an injury and died. The learned counsel has further submitted that the petitioner could not have been convicted by the trial court since the prosecution case was not believed in toto. According to the prosecution the petitioner had bad habits but no details of these habits were furnished by the complainant when he entered the witness box. The petitioner caused only one injury and did not inflict multiple injuries to the deceased with his dagger. There is nothing on the record to show why the petitioner was removed unceremoniously from service. The prosecution evidence when gone through in its entirety does not inspire confidence. If the prosecution evidence is disbelieved then the defence version of the accused person in his statement recorded under section 342, Cr.P.C. has to be believed in toto. In support of his contentions the learned counsel has relied upon Muhammad Amin alias Naeem v. The State 2005 YLR 1757.

4. The learned Deputy Prosecutor-General has opposed the petition on the grounds that the petitioner is guilty of committing a heinous offence in as much as he inflicted an injury with his dagger to the deceased his former employer ultimately causing his death. Blood stained dagger was recovered from the petitioner on his pointing out. Evidence produced on behalf of the prosecution cannot be disbelieved and there is no likelihood of conviction being set aside when the main appeal comes up for hearing.

5. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

6. The petitioner in his statement recorded under section 342, Cr.P.C. stated that the deceased tried to commit sodomy with him, since he resisted the deceased attacked him with a dagger, however in the scuffle

which ensued the deceased sustained an injury which ultimately caused his death. The petitioner further stated that he fled from the scene of occurrence and subsequently surrendered himself before the police authorities. The statement made by the petitioner under section 342, Cr.P.C. does not inspire confidence. According to the petitioner a scuffle took place however he did not sustain even a minor injury. The deceased sustained a serious injury inflicted with a dagger which went deep into his body. A single injury going very deep into the body of the deceased could not have been sustained by him if he was grappling with the petitioner and both of them were in very close proximity to each other. According to the medical evidence the deceased had become unconscious immediately after sustaining the injury. Had the eyewitnesses not been present at the place of occurrence, the deceased could not have been shifted to the hospital so swiftly. Both the eyewitnesses took the deceased to the hospital along with the complainant. The eyewitnesses had no previous enmity with the petitioner and would not have falsely deposed against him.

7. The petitioner committed a heinous offence by inflicting a serious injury with a dagger to the deceased. Bail is not to be allowed to a convicted person as a matter of right, moreso where he is guilty of having committed a heinous offence. After recording of conviction the status of an 'accused person' changes and the judgment of the trial court convicting him is not to be suspended in the absence of a glaring illegality or a patent error which is apparent from the record as has been held in *Rafique Ahmad alias Shika v. The State* 2005 PCr.LJ 193. Minor discrepancies in the prosecution evidence cannot be the basis of suspending the sentence awarded to an accused person. It is trite that there can be no detailed scrutiny of evidence at this stage and only a tentative assessment of evidence is to be made. The learned counsel for the petitioner pressed into service a judgment of this court titled *Muhammad Amin alias Naeem v. The State* 2005 YLR 1757, however the

same would be of no avail since in this case the prosecution evidence was not disbelieved by the trial court and only some minor discrepancies were pointed out.

8. The upshot of the above discussion is that this petition being without any merit is dismissed.

H.B.T./M-243/L Petition dismissed.

**2011 M L D 1402**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**ANJUM NIAZ CHAUDHRY and 8 others---Petitioners**

**Versus**

**MANAGING DIRECTOR, SUI NORTHERN GAS PIPELINE LIMITED and 2  
others---Respondents**

Writ Petition No.18318 of 2010, decided on 20th October, 2010.

**(a) Oil and Gas Regulatory Authority Ordinance (XVII of 2002)---**

---S. 11---Constitution of Pakistan, Art. 199---Constitutional petition---  
Maintainability---Compressed Natural Gas (CNG) Filling Stations---Charging  
of excessive rates by Gas Supply Company---Contract entered between  
petitioner and company contained a clause for referring dispute to Authority  
for its resolution---Petitioner had not availed his remedy under such contract  
or S. 11 of Oil and Gas Regulatory Authority Ordinance, 2002---  
Constitutional petition filed without availing an alternate remedy would not  
be maintainable---High Court dismissed such petition accordingly.

Haji Khan Wali and another v. Director General CD and MD Peshawar and  
3 others 2005 YLR 3102 rel.

**(b) Constitution of Pakistan---**

----Art. 199---Constitutional petition---Alternate remedy, non- availing of---  
Effect---Petition would not be maintainable---Principles.

A petition under Article 199 of the Constitution would not be maintainable if the same' has been tiled without availing of an alternate remedy. Jurisdiction conferred under Article 199 of the Constitution is not an additional remedy provided by law. High Court while hearing a petition under Article 199 would have jurisdiction to interfere only if the petitioner had no other adequate remedy available.

Haji Khan Wali and another v. Director General CD and MD Peshawar and 3 others 2005 YLR 3102 rel.

Mian Shabaz Ali Anjum for Petitioners.

Muhammad Umar Sharif for Respondents.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---Briefly stated the facts of the case necessary for the disposal of this petition are that the petitioners are owners of their respective C.N.G Stations and supply C.N.G to various customers. That the respondents are supplying gas to their customers from Southern Source of Natural Gas and Northern Source of Natural Gas. On 5-8-2010 the petitioners were informed by means of a letter impugned (herein) that henceforth natural gas which was supplied to them would be a mixture of Southern and Northern Source of Natural Gas and initially GCV would be charged in the range of 950-980 B.T.U.

The learned counsel for the petitioners submits that Southern Source of Gas Supply and Northern Source of Gas Supply conies from totally different gas lines and it is not humanly possible to provide the petitioners with a mixture of both. That rates being charged from the petitioners could not be changed without prior approval of Oil and Gas Regulatory Authority. That the impugned letter dated 5-8-2010 has been issued in a

mala fide exercise of power. In any case rates cannot be increased with retrospective effect as this would militate against all known norms of natural justice.

The learned counsel for the respondents has taken an objection with regard to the maintainability of the petition and submitted that the petition has been filed without availing of an alternate remedy. Assuming but not conceding, excessive rates are being charged from the petitioners they have a right of filing a complaint in terms of section 11 of Oil and Gas Regulatory Authority Ordinance, 2002 to any case a contract has been signed between the petitioners and the respondents wherein it is stated in clear and unequivocal terms that in case any dispute arises between the parties the matter shall be referred to the authority for resolution. Since the petitioners have not availed of alternate remedies, this petition being not maintainable is liable to be dismissed. While the case was being argued the learned counsel for the respondents has given an undertaking that increase in tariff would not be applicable to the petitioners with retrospective effect. The respondents in their report and para wise comments have appended a copy of the contract entered into between the petitioners and the company. Clause 20 of the said contract is reproduced below:--

**DISPUTE RESOLUTION.**

In the event of any difference or dispute arising out of or in connection with the Contract between the Company and the Consumer which cannot be amicably resolved, it shall be referred to the Authority for resolution.

A plain reading of Clause 20 of the agreement would show that in case any difference or dispute arises between the Company and the Consumer the

matter shall be referred to the authority for its resolution, this has admittedly not been done.

The petitioners have also not availed of a remedy in terms of section 11 of the Oil and Gas Regulator Authority Ordinance 2002 which reads as under:--

11. Complaints.---(1). Any interested person may file a written complaint with the Authority against a licensee for contravention of any provision of this Ordinance or of any rule or regulation. The learned counsel for the petitioners while the case was being argued stated in clear and unequivocal terms that the respondents are licensee for the purpose of Oil and Gas Regulatory Authority Ordinance, 2002, as such it can safely be assumed that the petitioners had the remedy for filing a complaint in terms of section 11 of Oil and Gas Regulatory Authority Ordinance, 2002. A written complaint could have been filed by the petitioners against the respondents for having contravened any provision of Oil and Gas Regulatory Authority 2002 or of any rule or regulation. An assertion made by the learned counsel for the petitioners that he has challenged a letter dated 5-8-2010 issued by respondent No.3 and this petition has no nexus with any dispute regarding higher rates which are being charged has no force. The petitioners have two different remedies available one in terms of Clause 20 of the Contract signed between the petitioners and the respondents and another under section 11 of Oil and Gas Regulatory Authority Ordinance, 2002. It is trite that a petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 would not be maintainable if the same has been filed without availing of an alternate remedy. Jurisdiction conferred under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 is not an additional remedy provided by law. This court while hearing a

petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 would have jurisdiction to interfere only if the petitioner had no other adequate remedy available as has been held in Haji Khan Wali and another v. Director General CD and MD Peshawar and 3 others 2005 YLR 3102.

The upshot of the above discussion is that this petition being not maintainable is dismissed.

S.A.K./A-119/L Petition dismissed.

**2011 P Cr. L J 487**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**GULFAM AHMED---Petitioner**

**Versus**

**ADDITIONAL SESSIONS JUDGE, GUJRANWALA and 3 others---**

**Respondents**

Criminal Revision No. 1005 of 2010, heard on 1st December, 2010.

**(a) Illegal Dispossession Act (XI of 2005)---**

---S. 3---Prevention of illegal dispossession of property---Petition had been filed against order passed by the Trial Court, wherein a private complaint by the petitioner against respondents was dismissed---Petitioner/complainant had not given any material particulars of alleged act of dispossession which was essential---In the absence of material particulars, exact time and date of the alleged act of dispossession, no roving inquiry was to be conducted by the Trial Court to ascertain whether or not the complainant was dispossessed in terms of Illegal Dispossession Act, 2005---Complainant had already lodged an F.I.R. in respect of same



occurrence---Once an F.I.R. was registered, then a complaint under S.3 of Illegal Dispossession Act, 2005, would not be competent in respect of the same occurrence---No evidence was on record that respondents had any characteristics or antecedents of a land grabbers---Spirit of Illegal Dispossession Act, 2005 was to proceed against persons who were professional land grabbers or members of land mafia, and not against a person, accused of a solitary act of illegal dispossession---Petition was dismissed.

Zahoor Ahmed and 5 others v. The State and 3 others PLD 2007 Lah. 231 ref.

**(b) Illegal Dispossession Act (XI of 2005)---**

---Preamble & S.3---Purpose and object of Illegal Dispossession Act, 2005--  
--Disputes between rival parties were over possession of title of immovable property since time immemorial---Various remedies were available to a person who claimed that he had been illegally dispossessed from immovable property, both on the civil and criminal side---New class of persons had emerged in the society, who were referred to as 'Property grabbers' or in local parlance as 'Qabza Group'---Illegal Dispossession Act, 2005 was enacted to take to task those persons who had antecedents of grabbing property and it was essential to differentiate between a case where a person was accused of a solitary act of illegal dispossession; and where a person proceeded against was a professional land grabber and was notorious for grabbing property as and when an opportunity presented itself---Spirit of Illegal Dispossession Act, 2005 was to proceed against persons who were professional land grabbers or members of land mafia; and not against a person accused of a solitary act of illegal dispossession--  
-Petition was dismissed.

Mrs. Bushra Qamar for Petitioner.

Javaid Imran Ranjha for Respondents Nos. 2 and 3.

Mrs. Muqadus Tahira, Deputy Prosecutor-General, Punjab.

Date of hearing: 1st December, 2010.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---This petition filed under sections 435 and 439, Cr.P.C. read with Section 3 of the Illegal Dispossession Act, 2005, is directed against an order dated 31-8-2010, passed by respondent No.1 wherein a private complaint filed by the petitioner against respondents Nos.2 and 3 was dismissed.

2. Briefly stated facts of the case necessary for the disposal of this petition are that the petitioner filed a petition dated 16-6-2010, wherein it was alleged that respondents Nos.2 and 3 herein along with Mst. Naila Bibi former wife of the petitioner forcibly occupied a house owned by the petitioner after illegally dispossessing him from the same. The petitioner appeared as P. W.1 and in his cursory statement stated that he had divorced his wife Mst. Naila Bibi and the latter in connivance with her brothers respondents Nos.2 and 3 had illegally dispossessed him from his house and occupied the same without any legal authority. That F.I.R. bearing No.168 of 2010 in this regard had been registered at Police Station Peoples Colony, District Gujranwala on 15-4-2010. The private complaint was dismissed by respondent No. 1 on 31-8-2010 on the ground that no material particulars of the act of illegal dispossession were given in the complaint and from the record of the case it transpired that Mst. Naila Bibi former wife of the complainant was residing in the house since her "Talaq" and she had never handed over the possession of the house to the complainant.

3. The learned counsel for the petitioner submits that material particulars of offence in question have been given in the private complaint filed under Section 3 of the Illegal Dispossession Act, 2005, as is evident from the averments contained in paragraphs Nos.3, 4 and 5 of the complaint. That an F.I.R. bearing No.168 of 2010 dated 15-4-2010 for offences under sections 452, 380, 447, 337-L(2), 337-A(1), 34, P.P.C. registered at Police Station Peoples Colony, District Gujranwala was in any case appended with the private complaint wherein all material particulars had been given. That the learned trial Court summoned a report from the concerned SHO. The concerned SHO in his report dated 27-6-2010 stated that property in question was not owned by respondents Nos.2 and 3 and the latter had no legal justification to retain custody of the same. That the private complaint against respondents Nos. 2 and 3 could proceed in spite of the fact that the latter had not been declared to be land grabbers or members of land mafia.

4. The learned DPG has opposed the petition and submitted that a bare reading of paragraph No.4 of the complaint would show that no material particulars with regard to date and time of illegal dispossession have been given. According to the complaint, 'the petitioner was illegally dispossessed by respondents Nos.2 and 3 along with his former wife Mst. Naila Bibi. Mst. Naila Bibi has neither been arrayed as a respondent nor proceeded against. That on the complaint of the complainant an F.I.R. bearing No.168 of 2010 dated 15-4-2010 was registered at Police Station Peoples Colony, District Gujranwala against respondents Nos. 2 and 3 and in the F.I.R., the petitioner has admitted that his former wife Mst. Naila Bibi was already in possession of the house. Since respondents Nos. 2 and 3 are not members of land mafia and have not been declared to be land grabbers, the private complaint filed against them was not maintainable.

5. After adopting the arguments of the learned DPG, the learned counsel for respondents Nos. 2 and 3 submits that there is contradiction between

the averments as contained in the private complaint which was filed and the F.I.R. which was registered. In the private complaint it was submitted that the petitioner divorced his wife on 5-2-2010, however, in the F.I.R. which was registered on 15-4-2010, the petitioner has stated that he had a quarrel with his wife and thereafter she along with her brothers i.e. respondents Nos. 2 and 3 illegally occupied his house.

6. After going through the complaint and perusal of the record it is clear that the complainant has not given any material particulars of the alleged act of dispossession. It was essential for the complainant to give all the material particulars with regard to act of illegal dispossession in the complaint itself. In the absence of material particulars, exact time and date of the alleged act of dispossession, no roving inquiry is to be conducted by the learned trial Court to ascertain whether or not the complainant was dispossessed in terms of Illegal Dispossession Act, 2005. That the complainant lodged an F.I.R. bearing No.168 of 2010 dated 15-4-2010 at Police Station Peoples Colony, District Gujranwala in respect of the same occurrence. Once an F.I.R. was registered then a complaint under section 3 of the Illegal Dispossession Act, 2005, would not be competent in respect of the same occurrence as has been held by a Full Bench of this Court in "Zahoor Ahmed and 5 others v. The State and 3 others" (PLD 2007 Lahore 231). Disputes between rival parties over possession or title of immoveable property have been there since time immemorial. There are various remedies available to a person who claims that he has been illegally dispossessed from immoveable property both on the civil and criminal side. A new class of persons have emerged in our society who are referred to as property grabbers or in local parlance as Qabza Group. Illegal Dispossession Act 2005 was enacted to take to task those persons who have antecedents of grabbing property. It is essential to differentiate between a case where a person is accused of a solitary act of illegal dispossession and where a person proceeded against is a professional land

grabber and is notorious for grabbing property as and when an opportunity presents itself. In this case there is not an iota of evidence to establish that respondents Nos. 2 and 3 had any characteristics or antecedents of a land grabber. The spirit of Illegally Dispossession Act, 2005 is to proceed against persons who are professional land grabbers or members of land Mafia and not against a person accused of a solitary act of illegal dispossession. The august Supreme Court of Pakistan while deciding the case titled "Bashir Ahmad v. Additional Sessions Judge, Faisalabad and four others" (Civil Petition No.814-L of 2006) has reaffirmed the law as laid down by a Full Bench of this Court in "Zahoor Ahmed and 5 others v. The State and 3 others" (PLD 2007 Lahore 231) in its entirety.

7. For what has been stated above, this petition being without any merit is dismissed.

H.B.T./G-86/L Petition dismissed.

**2011 P Cr. L J 1835**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**PARVEEN BIBI---Petitioner**

**Versus**

**S.H.O. POLICE STATION SADAR MIAN CHANNU DISTRICT**

**KHANEWAL and another---Respondents**

Criminal Miscellaneous No. 353-H of 2011, decided on 27th June, 2011.

**Criminal Procedure Code (V of 1898)---**

---S. 491---Habeas corpus petition---Petitioner/mother had sought recovery of her minor son, four years of age, stated to be illegally detained and confined by father of the minor---Ordinarily, a mother and not the father, would be entitled to 'Hizanat' of any male child of less than 7 years of age---Petition seeking custody of a minor child wherein the mother had taken a plea that her child had been illegally detained and confined by his father could only be entertained by High Court, if; the child was of very tender age, meaning thereby that the mother would be given custody of a suckling baby or of a child of very tender age, who due to certain exceptional circumstances, could only be looked after by the mother; where a child of very tender age living with his mother was stated to have been very recently snatched by the father; where a mother could demonstrate to the court that the father was in the process of shifting child to some unknown place, so that approaching theGuardian Judge would become an exercise in futility---Any order passed regulating the custody of a minor child by High Court while seized of a petition under S.491, Cr.P.C. would essentially be interim in nature and would be subject to final adjudication by the Guardian Judge, whose orders would ultimately regulate the custody of the child---Alleged detenu was not of very tender age being four years old and child was not very recently snatched---It was not the case of the petitioner that Father

of alleged detenu was not likely to shift the child to some unknown place making it impossible for the petitioner to seek her remedy before the Guardian Judge---Petition was dismissed in circumstances.

Muhammad Javed Umarao v. Miss Uzma Vahid 1988 SCMR 1891; Nisar Muhammad and another v. Sultan Zari PLD 1997 SC 852; Naziha Ghazali v. The State and another 2001 SCMR 1782; Mst. Khalida Perveen v. Muhammad Sultan Mehmood and another PLD 2004 SC 1 and Mst. Nadia Perveen v. Mst. Almas Noreen and others Criminal Petition No. 127-L of 2010 **rel.**

Rana Jaffar Ali Khan for Petitioner.

Ch. Muhammad Akbar, D.P.-G.

Ch. Zulfiqar Ali Sidhu for Respondent No.2.

Riaz S.-I.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 491, Cr.P.C. the petitioner seeks recovery of her son Ali Shan four years of age stated to be illegally detained and confined by respondent No.2.

2. The learned counsel for the petitioner submits that the petitioner married respondent No.2 in the year 2003 and while the marriage was subsisting two children Mst. Fauzia Bibi and Ali Shan were born. The marriage between the petitioner and respondent No.2 turned sour and on 12-5-2011 respondent No.2 forcibly took away detenu Ali Shan a minor only four years of age when he was playing in the street.

3. The learned Deputy Prosecutor-General has supported the petition and submitted that the ends of justice would best be served if custody of the alleged detenu a minor only four years of age is handed over to his mother.

4. The learned counsel for respondent No.2 has opposed the petition and submitted that the present petition is not maintainable since

respondent No.2 is the father as well as natural guardian of the alleged detenu. In any case the instant petition is also liable to be dismissed on the ground that the petitioner has an alternate remedy of filing a petition before the Guardian Judge.

5. Ordinarily a mother and not the father would be entitled to 'Hizanat' of any male child less than 7 years of age and a female child who has not yet attained puberty as has been held by the august Supreme Court of Pakistan in **Nisar Muhammad and another v. Sultan Zari PLD 1997 Supreme Court 852**. Whether the custody of the alleged detenu can be handed over by this court to the petitioner in these proceedings is a matter which has to be determined in the first instance. It is trite that in such like cases this court is to use its jurisdiction under section 491, Cr.P.C. sparingly as plenary jurisdiction in the matter rests under another law. A proper course of action for the petitioner would be to institute legal proceedings before the Guardian Judge. Only in exceptional cases this court would exercise its jurisdiction to take away custody of a child from the father and hand it over to the mother. A petition seeking custody of a minor child wherein the mother has taken a plea that her child has been illegally detained and confined by his 'father can only be entertained by this court if

- (i) the child is of very tender age meaning thereby that the mother would be given custody of a suckling baby or of a child of very tender age who due to certain exceptional circumstances can only be looked after by the mother.
- (ii) Where a child of very tender age living with his mother is stated to have been very recently snatched by the father.
- (iii) Where a mother can demonstrate to the court that the father is in the process of shifting the child to some unknown place so that approaching the Guardian Judge becomes an exercise in futility.

6. The principles of law enumerated above are in consonance with the law laid down by the august Supreme Court of Pakistan in **Muhammad**



**Javed Umrao v. Miss Uzma Vahid 1988 SCMR 1891, Nisar Muhammad and another v. Sultan Zari PLD 1997 SC 852, Naziha Ghazali v. The State and another 2001 SCMR 1782, Mst. Khalida Perveen v. Muhammad Sultan Mehmood and another PLD 2004 SC 1, Mst. Nadia Perveen v. Ms. Almas Noreen and others Criminal Petition No.127-L-2010.**

7. Any order passed regulating the custody of a minor child by this court while seized of a petition under section 491, Cr.P.C. would essentially be interim in nature and would be subject to final adjudication by the Guardian Judge whose orders would ultimately regulate the custody of the child. The alleged detenu Ali Shan is not of very tender age and is at present four years old. It is also not a case of a very recent snatching. The petitioner while addressing arguments has stated in clear and unequivocal terms that the alleged detenu was snatched by his father respondent No.2 on 12-5-2011 whereas the present petition was filed on 14-6-2011. It is not the case of the petitioner that respondent No.2 father of the alleged detenu is likely to shift the child to some unknown place making it impossible for the petitioner to seek her remedy before the Guardian Judge.

8. For what has been stated above, this petition being without any merit stands dismissed.

H.B.T./P-9/L Petition dismissed.

**2011 P L C (C.S.) 1551**  
**[Lahore High Court]**  
**Before Muhammad Yawar Ali and Ch. Muhammad Younis, JJ**  
**ABDUL RAHEEM KHAN**  
**Versus**  
**MANAGING DIRECTOR PEPSCO, WAPDA HOUSE LAHORE and 2**  
**others**

I.C.A. No.203 of 2011 in Writ Petition No.7103 of 2011, decided on 20th June, 2011.

**Pakistan Water and Power Development Authority (Efficiency and Discipline) Rules, 1978---**

---R. 6(1)---Constitution of Pakistan, Art.199---Law Reforms Ordinance (XII of 1872), S.3---Intra-court appeal---Departmental proceedings---Show-cause notice---Constitutional jurisdiction of High Court---Scope---Appellant was departmentally proceeded against by authorities and show-cause notice was issued to him---Single Judge of High Court declined to interfere in the issuance of show-cause notice---Validity---No final order having been passed against appellant and only initiation of disciplinary proceedings by competent authority against appellant were challenged, therefore, petition under Art.199 of the Constitution was not maintainable---Division Bench of High Court refused to interfere in the judgment passed by Single Judge of High Court---Intra-court appeal was dismissed, in circumstances.

Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939 and Virasat Ullah v. Bashir Ahmad, Settlement Commissioner (Industries) and another 1969 SCMR 154 **rel.**

Tahir Mehmood for Appellant.

## **ORDER**

This Intra-Court Appeal filed under sections 3 and 4 of the Law Reforms Ordinance, 1972 is directed against an order dated 10-6-2011 passed by a learned Single Judge in Chamber.

2. Briefly stated the facts of the case necessary for the disposal of this appeal are that the appellant was issued a charge sheet on 7-7-2010 under Rule 6(I) of Pakistan WAPDA Employees E&D Rules, 1978. The appellant replied to the charge-sheet on 4-8-2010 wherein he stated in clear terms that all the charges levelled against him were false and incorrect. A formal inquiry was instituted against the appellant in which the appellant was found guilty in 10 out of 12 allegations levelled against him as per report of Chief Engineer (P&E) MEPCO HQs Ltd. Multan dated 28-10-2010. Subsequently, the appellant was served with a final show cause notice on 23-5-2011 which was impugned before the learned Single Judge in Chamber.

3. The learned counsel for the appellant submits that disciplinary proceedings have been initiated against the appellant with mala fide intent. That earlier the appellant filed a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 bearing No.412 of 2010 against an order passed by respondent No.2 This was felt ill by respondent No.2 and it is for this reason that disciplinary proceedings have been initiated against the appellant. There is no material available on the record which could form the basis for initiating disciplinary proceedings against the appellant. That due weight was not given to Memorandum No.1998 dated 1-6-2011 issued by the Revenue Officer (P) MEPCO Limited 1st D.G. Khan wherein it was observed that eight out of twelve allegations levelled against the appellant did not relate to him.

4. We are afraid the contentions raised by the learned counsel for the appellant have no merit. This Court in **Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939** has held that a petition under Article 199 of the

Constitution of Islamic Republic of Pakistan 1973 would not be maintainable against mere issuance of a show cause notice since the appellant has been simply called upon to show cause as to why he should not be proceeded against. The august Supreme Court of Pakistan in **Virasat Ullah v. Bashir Ahmad, Settlement Commissioner (Industries) and another (1969 SCMR 154)** has also held that mere issuance of a notice by the settlement Commissioner calling upon the transferee to justify his transfer could not furnish the basis for filing a constitutional petition.

5. A bare reading of Writ Petition No.7103 of 2011 impugned before us would show that no final order has been passed against the appellant and only initiation of disciplinary proceedings against the appellant were challenged. Since no final order in disciplinary proceedings initiated against the appellant has been passed by the competent authority it can safely be held that the petition which was filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 was not maintainable.

6. In this view of the matter, this Intra Court Appeal being without any substance is dismissed in limine.

M.H./A-183/L Intra-court appeal dismissed.

**2011 Y L R 686**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**USMAN NOOR---Petitioner**

**Versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No. 11772-B of 2010, decided on 10th November, 2010.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 498---Pre-arrest bail---Guidelines with regard to the grant of pre-arrest bail to an accused stated.

Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427 ref.

**(b) Criminal Procedure Code (V of 1898)---**

----S.498---Penal Code (XLV of 1860), S.420/468/471/409---Cheating and dishonestly inducing delivery of property, forgery for purpose of cheating, using as genuine a forged document, criminal breach of trust---Pre-arrest bail, refusal of---F.I.R. was not shown to have been registered with mala fide intention against the accused---Accused had not stated in the petition anything as to why a false and fabricated case had been registered against him by a multi-national Bank---F.I.R. simply contained a bald assertion of case having been registered as a result of mala fides' on the part of the complainant and the prosecution in order to achieve ulterior motives---No reason was either mentioned in the petition or argued before the court to support the said assertion---Material particulars of mala fides had to be given in the petition and proved in the court---No court has any power to grant pre-arrest bail unless the F.I.R. was shown to be tainted with mala fides---Case against accused was not shown to have been registered with

mala fide intention and ulterior motives---Pre-arrest bail was refusal to accused in circumstances.

Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427 and The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi v. Saeed Ahmad Khan and others and The Secretary, Department of Education, Government of Punjab v. M.R. Toosy, Ex-Principal, Government College, Sargodha and others PLD 1974 SC 151 ref.

**(c) Criminal Procedure Code (V of 1898)---**

---S.498---Pre-arrest bail---Mala fides--Material particulars of mala fides have to be given in the body of the petition before a person can be allowed to allege and prove the same.

The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi v. Saeed Ahmad Khan and others and The Secretary, Department of Education, Government of Punjab, v. M.R. Toosy, Ex-Principal, Government College, Sargodha and others PLD 1974 SC 151 ref.

**(d) Criminal Procedure Code (V of 1898)---**

---S.498---Pre-arrest---Scope---No court had any power to grant pre-arrest bail, unless it can be shown that the F.LR. in question is tainted with mala fides.

M. Anwar Sipra, Advocate along with petitions (in person).

Ms. Muqadus Tahira, D.P.-G.

Mian M. Sikandar Hayat for Respondent No.2.

Raja Zulfiqar Bashir Ahmad, Manager Litigation.

Anwar Cheema Inspector, Yaqoob S.-I.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 498, Cr.P.C. the petitioner seeks pre-arrest bail in case F.I.R. No.21 of 2010, dated 9-1-2010 for offences under section 420/468/471/409, P.P.C. registered at Police Station Johar Town District Lahore.

2. The learned counsel for the petitioner submits that no amount was ever credited in the account of the petitioner. That the offence in question has been committed by one Raza Ali Athar who is shown to be a co-accused in the F.I.R. That said Raza Ali Athar who was previously working as Manager Standard Chartered Bank (Limited) Tufail Road Branch, Lahore had developed links with other members of the Staff working at Standard Chartered Bank Johar Town Branch, Lahore and he misappropriated the entire amount in connivance with them. That all the persons stated to have been defrauded were in fact doing business with Raza Ali Athar who was paying them profit periodically and it would be wrong to say that any of them had been defrauded by the petitioner. That there, is nothing on the record to connect the petitioner with the commission of offence. The petitioner is a highly qualified person and is a previous non-convict, hence entitled to the grant of bail.

3. The learned D.P.-G. while opposing the petition submits that the petitioner has been named in the F.I.R. and a specific role has been attributed to him. That there is no mala fide on the part of the police or the complainant to have registered a false and fabricated case against the petitioner. That the petitioner has been declared a proclaimed offender (P.O.) on 15-1-2010 and proceedings under sections 87 and 88, Cr.P.C. have already been initiated against him.

4. After adopting the arguments advanced by the learned D.P.G. the learned counsel for respondent No.2/complainant submits that there is

documentary evidence available to connect the petitioner with the commission of offence. That the petitioner misappropriated a large amount of money from various persons as is evident from the contents of the F.I.R. That the complainant being a multi national bank would never register a false and fabricated case with mala fide intent against anyone.

5. There is nothing on the record to show that the F.I.R. has been registered against the petitioner with mala fide intent by the complainant who happens to be Regional Head Clerk of a multi national Bank. A perusal of record would show that large amount of money was handed over to the petitioner by the aggrieved persons for purpose of investment, however this amount was misappropriated by the petitioner and his co-accused Raza Ali Athar. The august Supreme Court of Pakistan in Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427 has given a guideline with regard to the grant of pre-arrest bail to an accused person the operative part reads as follows:--

- (a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;
- (b) pre-arrest bail is not to be used as a substitute or as an alternative for post arrest bail;
- (c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and that there were, in fact sufficient grounds, warranting further inquiry into his guilt;



- (d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;
- (e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive from law; and finally that;
- (f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance, approach the Court of first instance i.e. the Court of Sessions before petitioning the High Court for the purpose."

6. Pre-arrest bail is neither a substitute nor an alternative for post arrest bail. An accused besides establishing existence of good grounds for release on bail also has to show that his arrest is being sought for ulterior motives in order to humiliate and dishonour him. In this case the petitioner had to demonstrate that the F.I.R. in question had to demonstrate that the F.I.R. in question had been registered against him with mala fide intent. The petitioner has failed to show that the F.I.R. in question has been registered against him with mala fide intent. The petitioner has not stated any thing in the petition as to why a false and fabricated case has been registered against him by a multi-national bank. There is a bald assertion that "F.I.R. in hand is result of mala fide on the part of the complainant and the prosecution in order to achieve ulterior motives. It has E neither been stated in the petition nor argued before this Court as to what were the reasons compelling the complainant who works for a multi national bank to have lodged a criminal case against the petitioner with mala fide intent. It is trite that material particulars of mala fide have to be given in the body

of the petition before a person can be allowed to allege and prove the same as has been held by the august Supreme Court of Pakistan. The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi v. Saeed Ahmad Khan and others and The Secretary, Department of Education, Government of Punjab, v. M.R. Toosy, Ex-Principal, Government College, Sargodha and others PLD 1974 SC 151. No Court has any power to grant pre-arrest bail unless it can be shown that the F.I.R. in question is tainted with mala fide. There is nothing on the record to show that a false and frivolous criminal case has been registered against the petitioner with mala fide intent and with ulterior motives.

7. The upshot of the above discussion is that this petition being without any merit is dismissed. Ad interim pre-arrest bail already granted to the petitioner vide order, dated 21-10-2010 stands recalled.

N.H.Q./U-18/L Pre-arrest bail refused.

**2011 Y L R 1417**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD FAYYAZ JAVAID--- Petitioner**

**Versus**

**THE STATE and another----Respondents**

Criminal Miscellaneous No.5043-B of 2010, decided on 31st May, 2010.

**Criminal Procedure Code (V of 1898)---**

----S. 497---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Bail, grant of---Accused was behind the bars for the last six months and complainant had filed a civil suit against accused---Accused had been charged with an offence which carried a maximum punishment

of three years' imprisonment--Grant of bail in offences punishable with imprisonment for less than ten years, was a rule and refusal an exception--Accused was admitted to bail, in circumstances.

Zafar Iqbal v. Muhammad Anwar and others 2009 SCMR 1488; Allah Jawaya v. The State 2006 YLR 1105; Shameel Ahmed v. The State 2009 SCMR 174; Muhammad Ghufuran and 6 others v. The State 2010 PCr.LJ 351 and Muhammad Naeem v. The State 2010 PCr.LJ 504 rel.

Shahid Hussain Chaudry for Petitioner.

Aamir Asif Ranjha, Deputy Prosecutor General.

Fazal-ur-Rehman Butt for Respondent No.2/Complainant.

Muhammad Akbar, A.S.-I.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**--Through this petition filed under section 497, Cr.P.C. the petitioner seeks grant of post-arrest bail in case F.I.R. No. 584 of 2008, dated 16-5-2008 for an offence under section 489-F, P.P.C. registered at Police Station Factory Area, District Lahore.

2. It has been averred in the F.I.R. that the complainant gave a sum of Rs.10,00,000 to the accused for business purpose. That the accused did not honour his commitment and also refused to return Rs.10,00,000 which was taken by him. That the accused issued ten cheques in favour of the complainant. The complainant deposited two cheques in the sum of Rs.400,000 in his account which were dishonoured on 6-2-2008 on the grounds that there was insufficient balance available in the account of the accused.

3. Learned counsel for the petitioner submits that the cheques in question were issued as a guarantee in lieu of certain merchandise which was

provided to the complainant and since merchandise had been provided to the complainant, there was no occasion for depositing the cheques referred to in his account. Learned counsel goes on to submit that there is an inordinate delay in filing of F.I.R. that the offence under section 489-F, P.P.C. does not fall within the prohibitory clause of section 497, Cr.P.C. Lastly, it is submitted that the complainant/respondent No. 2 has filed a civil suit for recovery of the disputed amount and the same is pending adjudication before learned Additional District Judge, Lahore. Reliance is placed on "Zafar Iqbal v. Muhammad Anwar and others" (2009 SCMR 1488).

4. Learned D.P.G. and learned counsel, for respondent No.2/complainant remained submit that petitioner absconder for one and half year, issuance of cheque and signatures on the cheque are admitted, Challan was submitted before the trial Court on 25-10-2009 and Charge has been framed on 14-1-2010 and as such no grounds have been made out for grant of post arrest bail. In support of the contentions reliance is placed on "Allah Jawaya v. The State" (2006 YLR 1105), "Shameel Ahmed v. The State" (2009 SCMR 174), "Muhammad Ghufraan and 6 others v. The State" (2010 PCr.LJ 351) and "Muhammad Naeem v. The State" (2010 PCr.LJ 504).

5. It is an admitted position that petitioner is behind the bars for the last six months and that complainant has filed a civil suit against the petitioner. Petitioner has been charged with an offence which carries a maximum punishment of three years' imprisonment. The august Supreme Court of Pakistan in "Tariq Bashir and 5 others v. The State" (PLD 1995 Supreme Court 34) has held that grant of bail in offences punishable with imprisonment for ' less than ten years is a rule and refusal an exception.

6. In this view of the matter, this petition is allowed and the petitioner is admitted to post-arrest bail subject to his furnishing bail-bonds in the sum

of Rs.4,00,000 (Rupees Four Hundred Thousand only) with one surety in the like amount to the satisfaction of trial Court.

H.B.T./M-676/L Bail granted.

**2011 Y L R 1550**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD SHAKEEL TUFAIL---Petitioner**

**Versus**

**THE STATE and another----Respondents**

Criminal Miscellaneous No. 3455-B of 2010, decided on 19th April, 2010.

**Criminal Procedure Code (V of 1898)---**

----S. 497---Penal Code (XLV of 1860), S.489-F---Dishonouring of cheque---Bail, grant of---Offence under S.489-F, P.P.C. did not fall within the prohibitory clause of S.497, Cr.P.C. and carried a maximum punishment of three years---Investigation of the case was complete and accused was no more required by the Police authorities for the purpose of investigation---Trial Court while refusing to grant bail had observed that accused was an ailing person who needed medical treatment---Medical report revealed that accused "needed management from Gastroenterologist"---Grant of bail in offences punishable with imprisonment for less than ten years was a rule and refusal an exception---Accused was admitted to bail, in circumstances.

Tariq Bashir and 5 others v. The State PLD 2005 SC 34 **ref.**

Ch. Shahid Hussain for Petitioner.

M. Shahzad Khan for the Complainant.

Aamir Asif Ranjha, D.P.-G. along with Muhammad Boota, S.-I.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition under section 497, Cr.P.C. the petitioner seeks grant of post-arrest bail in case F.I.R. No. 1443 of 2009, dated 24-12-2009 for offence under section 489-F, P.P.C. registered at Police Station Gulberg, Lahore.

2. It has been averred in the F.I.R. that petitioner issued a cheque in the sum of Rs.700,000 in favour of respondent No.2 which when presented bounced on account of the fact that there were "Insufficient funds in the account".

3. Learned counsel for the petitioner submits that cheque in question was given as a guarantee and there was some business dealing between the respondent No. 2 and the petitioner. Learned counsel draws attention of this Court to Annexure "C" of this petition to show that petitioner is suffering from various ailments and as such he may be enlarged on bail.

4. On the other hand, learned D.P.-G. and counsel for respondent No. 2 oppose the petition and submit that the petitioner has been named in the F.I.R., that there is no dispute of a civil nature between the petitioner and the respondent No. 2, that issuance of cheque is admitted, that Challan has been submitted before the trial Court on 20-1-2010 and that a bare reading of Medical Report No. 154, dated 1-3-2010 by the Medical Officer Central Jail Lahore placed as Annexure "C" of this petition would show that none of the ailments which has been mentioned in the report are dangerous to life.

5. Arguments have been heard and record perused.

6. It is an admitted position that offence under section 489-F, P.P.C. does not fall within the prohibitory clause and carries a maximum punishment of three years. Investigation of the case is complete and petitioner is no more required by the police authorities for the purposes of investigation. Learned Additional Sessions Judge, Lahore while refusing to grant bail vide order dated 17-3-2010 has observed that

petitioner is an ailing person who needs medical treatment. A copy of Medical Report No. 154, dated 1-3-2010 issued by Medical Officer Central Jail, Lahore placed as Annexure "C" of the petition reveals that petitioner "needs management from Gastroenterologist". The apex Court in case titled Tariq Bashir and 5 others v. The State PLD 2005 SC 34 has held that grant of bail in offences punishable with imprisonment for less than ten years is a rule and refusal an exception. This petition is, therefore, allowed and petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.7,00,000 with one surety in the like amount to the satisfaction of trial Court.

H.B.T./M-674/L Bail granted.

**PLJ 2011 Lahore 110**

**Present: Muhammad Yawar Ali, J.**

**SHAHID IQBAL, Ex-ASSISTANT LINEMAN, LAHORE--Petitioner**

**versus**

**PUNJAB LABOUR APPELLATE TRIBUNAL, LAHORE through Its  
Chairman and 2 others--Respondents**

W.P. No. 2298 of 2010, decided on 24.3.2010.

**Limitation Act, 1908 (IX of 1908)--**

---S.5--Industrial Relations Ordinance, S. 46--Constitution of Pakistan, 1973--Art. 199--Constitutional petition--Condonation of delay--Restoration of petition--Grievance petition against an order of compulsory retirement--Application for restoration of petition--Application seeking restoration was dismissed by Pb. Labour Court--No sufficient grounds for restoration of the grievance petition--Appeal was also dismissed--Challenge to--Validity--Petitioner in his application seeking restoration of his grievance petition had neither mentioned the nature of his illness nor appended any medical certificate by a doctor to corroborate the same--Second ground that

Labour Court had shifted its premises, it was not possible for the petitioner to have filed an application seeking restoration of his grievance petition in time is also not tenable in law--Held: Petition which was dismissed for non-prosecution can only be restored if there exist "sufficient grounds" which would warrant its restoration--Petition was dismissed. [P. 111] A

1980 SCMR 561 & 1981 SCMR 37, rel.

Mr. Tanveer Ahmed Ghumman, Advocate, with Petitioner.

Syed Nayar Abbas Rizvi, Asst. A.G, on Court's call.

Date of hearing: 24.3.2010.

### **Order**

The petitioner filed a grievance petition under Section 46 of the Industrial Relations Ordinance against an order of compulsory retirement passed by Respondent No. 2 which was dismissed on 11.7.2008 for non-prosecution. The petitioner being aggrieved filed an application for restoration of the petition and also appended with it an application under Section 5 of The Limitation Act for condonation of delay. In the application moved for restoration of the petition it was stated that the petitioner fell ill and was also hampered in his efforts due to the fact that the premises of the Labour Court had been shifted from one place to another.

2. Application seeking restoration was dismissed by Presiding Officer of Punjab Labour Court No. 1, Lahore, on 1.4.2009, on the ground that there were no sufficient grounds for restoration of the grievance petition.

3. The petitioner being aggrieved filed an appeal on 5.6.2009 before Respondent No. 1 which was also dismissed by order dated 4.9.2009 on the ground that the appellant/petitioner had filed an application for restoration of the grievance petition before Labour Court on 17.2.2009 after a period of more than seven months.

4. Learned counsel for the petitioner in this petition filed under Article 199 of the Islamic Republic of Pakistan, 1973, has argued that the petitioner fell ill, the Labour Court shifted its premises and as such there existed good grounds for condonation of delay.



5. After hearing the arguments addressed by learned counsel for petitioner and going through the record it can safely be concluded that there were no grounds for setting aside order dated 11.7.2008 of the Labour Court, wherein, the grievance petition was dismissed for non-prosecution. The petitioner in his application seeking restoration of his grievance petition has neither mentioned the nature of his illness nor appended any medical certificate by a doctor to corroborate the same. The second ground raised by learned counsel for the petitioner that since the Labour Court had shifted its premises, it was not possible for him to have filed an application seeking restoration of his grievance petition in time is also not tenable in law. It is trite that a petition which is dismissed for non-prosecution can only be restored if there exist "sufficient grounds" which would warrant its restoration. The Apex Court in "Sahib Khan and others Vs. Ghulam Dastgir and others" (1980 SCMR 561) has held that any delay which is occasioned on account of the petitioner falling ill per se is not a good ground for condonation of delay. In any case, the petitioner had to explain delay of each and every day as held by the August Supreme Court of Pakistan in "Commissioner of Income Tax, Vs. Rais Pir Ahmad Khan" (1981 SCMR 37) which admittedly has not been done.

5. The Respondent No. 1 in the impugned order dated 4.9.2009 has lightly concluded that law favours the vigilant and not the indolent and that there were no valid grounds for restoration of the petition.

6. Upshot of the above discussion is that there is no merit in this petition and the same is dismissed in limine.

(R.A.) Petition dismissed.

**PLJ 2011 Cr.C. (Lahore) 847**

**Present: Muhammad Yawar Ali, J.**

**TANVEER ELAHI, DIRECTOR TAJ TEXTILE MILLS (LTD.) LAHORE--**

**Petitioner**

**Versus**

**STATE and another—Respondents**

CrI. M.No. 5326-B of 2010, decided on 9.6.2010.

**Criminal Procedure Code, (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860)--Ss. 489-F--Dishonour of cheque--Bail, grant of--Account was name of company and not in name petitioner--Inordinate delay in filing FIR--FIR had been lodged by complainant with malafide intention and ulterior motive--Record revealed cheques were dishonoured for reason that rubber stamp of company was not affixed and not for reason of insufficient funds in account of petitioner--Offence u/S. 489-F, PPC was not fall within prohibitory clause--Grant of bail was a rule and refusal an exception--Bail was allowed. [P. 849] A & B Ch. Sarfraz Ali Diyal, Advocate for Petitioner.

Mr. Aamir Asif Ranjha, D.P.G. for State.

Mr. Asad Manzoor Butt, Advocate for Respondent No. 2/Complainant.

Date of hearing: 9.6.2010.

**Order**

Through this petition filed under Section 498 Cr.P.C. the petitioner seeks grant of bail before arrest in case FIR No. 341/2010 dated 02.04.2010 for an offence under Section 489-F PPC registered at Police Station Ghalib Market District Lahore.

2. It has been averred in the FIR that the petitioner issued three cheques all dated 04.11.2006 in all valuing Rs. 10,25,000/- which bounced on being presented on 26.03.2007.

3. Learned counsel for the petitioner submits that the cheques referred to in the FIR were not issued by the petitioner in his individual capacity rather those were issued by him as Director of a Company working under the name and style of "Taj Textile Mills Limited". That account is in the name of the Company and not in the name of the petitioner. That there is a genuine bona fide business dispute between the parties and a civil suit under Order XXXVII of the Code of Civil Procedure, 1908, has been filed by the complainant and is pending adjudication before the trial Court. That cheques were issued as a measure of security and the complainant knew that cheques referred to in the FIR could not be encashed unless the official stamp of the company was affixed on those cheques. Lastly, it is submitted that two demand drafts favouring the complainant for the outstanding amount have already been received by the complainant. Learned counsel for the petitioner has placed reliance on Mazhar Iqbal vs. The State 2006 YLR 406, Ali Murtaza vs. The State 2005 PCr.LJ 1773 and Major Anwar-ul-Haq vs. The State PLD 2005 Lahore 607.

4. Learned DPG opposes the petition and submits that considerations for grant of bail before arrest are different from considerations for grant of bail after arrest. That a bare reading of the FIR would show that signatures of the petitioner on the cheques are admitted and he is guilty of having committed an offence under Section 489-F PPC.

5. After adopting the arguments of learned DPG, learned counsel for Respondent No. 2/complainant submits that Demand Drafts referred to by the learned counsel for the petitioner pertain to a different transaction and have nothing to do with the cheques referred to in the FIR. That civil and criminal proceedings can proceed side by side. In support of his contentions learned counsel relies on "Shameel Ahmed vs. The State" (2009 SCMR 174), "Seema Fareed and others v. The State and another" (2008 SCMR 839) "Muhammad Nadeem vs. The State" (2006 YLR 3043), "Muhammad Bakhsh vs. The State" (2006 YLR 23) and "Ibrahim Ghulam Mustafa vs. The State" (2007 PCr.LJ 1748).

6. There is an inordinate delay in filing of FIR for which no plausible explanation is forthcoming. Three cheques referred to in the FIR were issued on 04.11.2006 whereas the FIR was lodged on 02.04.2010. In the instant petition it has been alleged by the petitioner that FIR has been lodged by the complainant with mala-fide intention and with ulterior motives. A perusal of record revealed that cheques were dishonoured for the reasons that rubber stamp of the company was not affixed and not for reasons of insufficient funds in the account of the petitioner.

7. It is an admitted position that offence under Section 489-F PPC does not fall within the prohibitory clause and carries a maximum punishment of three years. The Apex Court in case titled Tariq Bashir & 5 others vs. The State PLD 2005 SC 34 has held that grant of bail in offences punishable with imprisonment for less than ten years is a rule and refusal an exception. This petition is, therefore, allowed and the ad-interim pre-arrest bail already granted to the petitioner vide order dated 21.05.2010 stands confirmed subject to his furnishing fresh bail bonds in the sum of Rs. 11,00,000/- with one surety in the like amount to the satisfaction of trial Court.

(S.L.) Bail allowed.

**PLJ 2011 Cr.C. (Lahore) 922**

**[Multan Bench Multan]**

**Present: Muhammad Yawar Ali, J.**

**MUHAMMAD ILYAS and 2 others--Petitioners**

**Versus**

**STATE and another--Respondents**

CrI. Misc. No. 1748-B of 2011, decided on 14.6.2011.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 498--Pakistan Penal Code, 1860, Ss. 337-F(v)/337-F(ii)/337-L(ii)/379/148/149--Bail before arrest--Confirmed--Inordinate delay in lodging FIR--No plausible explanation--Injuries sustained by complainant

and her husband had been classified as Section 337-L(ii) PPC, which carries a maximum punishment of two years imprisonment--Medical board had held that possibility of injuries sustained by husband of the complainant being fabricated could not be ruled out--Petitioner had been charged with an offence which does not fall within the prohibitory clause of Section 497 Cr.P.C.--Bail allowed and confirmed. [P. 924] A

Ch. Daud Ahmed Wains, Advocate for Petitioners.

Ch. Muhammad Akbar, DPG for State.

Mr. Mehmood Ashraf, Advocate for Respondent No. 2/ Complainant.

Date of hearing: 14.6.2011.

### **Order**

Through this petition filed under Section 498 Cr.P.C. the petitioners seek pre-arrest bail in case FIR No. 30/2011 dated 23.02.2011 for offences under Section 337-F(v)/337-F(ii)/337-L(ii)/379/148/149 PPC registered at Police Station Civil Lines, District Sahiwal.

According to the FIR on 18.02.2011 the complainant along with her husband Muhammad Shafiq were coming out of Court premises of the learned Additional Sessions Judge Sahiwal when the petitioners along with one accused person launched an attack upon them. Petitioner No. 1 while armed with a knife caused two injuries on the left arm of Muhammad Shafiq husband of the complainant. Similarly Petitioner No. 1 and Petitioner No. 3 caused injuries to Muhammad Shafiq husband of the complainant. The petitioners are also stated to have snatched away a gold ear ring belonging to the complainant, a purse containing Rs. 3500/- in cash and a Nokia mobile.

The learned counsel for the petitioners submits that the FIR has been lodged with a delay. That a bare reading of the medical legal report of injuries sustained by the complainant would show that all the injuries have been classified as Section 337-L(ii) PPC. Similarly after going through the medical legal report of Muhammad Shafiq husband of the complainant it is clear that he has also sustained injuries classified as Section 337-L(ii)

PPC. A Medical Board was constituted on 03.05.2011 wherein it is opined that possibility of Injuries No. 1, 2 and 3 suffered by Muhammad Shafiq being fabricated could not be ruled out. The learned counsel further submits that the FIR is tainted with mala fide and has been lodged against the petitioners on account of previous enmity since admittedly litigation on the criminal and civil side is pending between the petitioners and the complainant.

The learned Deputy Prosecutor General Punjab and the learned counsel for Respondent No. 2/complainant have opposed the petition and submitted that the petitioners have been named in the FIR and a specific role of causing injuries to the complainant side has been attributed to them. That the petitioners not only caused injuries to the complainant and her husband but also tore the shirt being worn by the complainant and by so doing exposed her private parts to the public. The petitioners are guilty of having committed a heinous offence and are not entitled to the concession of pre-arrest bail. There is no mala fide on the part of the complainant to have registered a false and frivolous case against the petitioners.

After hearing the arguments addressed by the parties and carefully perusing the record it is clear that the FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place on 18.02.2011 whereas the FIR has been lodged on 23.02.2011. Injuries sustained by the complainant and her husband have been classified as Section 337-L(ii) PPC which carries a maximum punishment of two years imprisonment. The Medical Board in its meeting held on 03.05.2011 has held that possibility of Injuries No. 1, 2 and 3 sustained by Muhammad Shafiq husband of the complainant being fabricated could not be ruled out. The petitioners have been charged with an offence which does not fall within the prohibitory clause of Section 497 Cr.P.C.

In this view of the matter, this petition is allowed and the ad-interim pre-arrest bail already granted to the petitioners vide order dated 11.05.2011

stands confirmed subject to their furnishing fresh bail bonds in the sum of Rs. 50,000/- each with one surety each in the like amount to the satisfaction of the learned Trial Court.

(A.S.) Bail allowed.

**PLJ 2011 Cr.C. (Lahore) 925**  
**[Multan Bench Multan]**  
**Present: Muhammad Yawar Ali, J.**  
**MUHAMMAD KASHIF--Petitioner**  
**versus**  
**STATE and another—Respondents**

CrI. Misc. No. 1711-B of 2011, decided on 22.6.2011.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, 1860, Ss. 457/380 & 411--Bail, grant of--  
Accused was not named in FIR--Implicated on the basis of a  
supplementary statement of complainant--No identification parade was  
held--Accused was previous non-convict--Bail allowed. [P. 926] A

Syed Shahid Muzamal Hussain Sherazi, Advocate for Petitioner.

Ch. Muhammad Akbar, D.P.G. for State.

Mr. Tahir Mehmood, Advocate for Respondent No. 2/ Complainant.

Date of hearing: 22.6.2011.

**Order**

Through this petition, filed under Section 497 Cr.P.C. the petitioner seeks post arrest bail in case FIR No. 159/2011 dated 06.03.2011 for offences under Sections 457/380/411 PPC registered at Police Station City Muzaffargarh District Muzaffargarh.

According to the FIR Muhammad Ahsan along with four other persons committed theft of clothing material belonging to the petitioner valuing Rs. 13,46,350/-. On 09.03.2011 the complainant got his statement recorded under Section 161 Cr.P.C. wherein he stated that he had good reasons for

suspecting that the offence in question has been committed by the petitioner.

The learned counsel for the petitioner submits that the petitioner has not been named in the FIR and no overt act has been attributed to him. The petitioner has been implicated on the basis of a supplementary statement which was recorded by the complainant wherein it has merely been stated that the complainant suspected that the offence in question has been committed by the petitioner. The complainant in his statement recorded under Section 161 Cr.P.C. has not mentioned as to how he has found out that the offence in question has been committed by the petitioner.

The learned Deputy Prosecutor General and the learned counsel for Respondent No. 2/complainant have opposed the petition and submitted that the petitioner has been found to be guilty during the investigation which has been conducted. That clothing material stolen from the shop of the complainant valuing Rs. 2,17,000/- has been recovered from the petitioner. There is no mala fide on the part of the complainant to have falsely implicated the petitioner. Two other FIRs have been lodged against the petitioner for having committed theft.

A bare reading of the FIR would show that the petitioner is not named therein. The petitioner stands implicated on the basis of a supplementary statement of the complainant recorded under Section 161 Cr.P.C. wherein he stated that he has good grounds for suspecting that the offence in question has been committed by the petitioner. Admittedly no identification parade was held to connect the petitioner with the commission of offence. The petitioner is previous non-convict.

For what has been stated above, this petition, is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court.

(A.S.) Bail allowed.















**2012 M L D 351**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MAQSOOD AHMAD---Petitioner**

**Versus**

**THE STATE and others---Respondents**

Criminal Miscellaneous No.105/B of 2011, decided on 18th January, 2011.

**Criminal Procedure Code (V of 1898)---**

---S. 497---Penal Code (XLV of 1860), Ss.395 & 412---Dacoity, dishonestly receiving property stolen in the commission of dacoity---Bail, grant of--- Accused was not named in F.I.R., but was implicated on the basis of a supplementary statement which was recorded by the complainant after three months of the F.I.R. being lodged---Complainant in his supplementary statement had not stated as to how and when he came to know that offence in question was committed by accused along with other co-accused---Submission of challan and framing of charge by the Trial Court alone would not be enough to disentitle accused from concession of bail---No identification parade had been held in the case---Accused was admitted to bail, in circumstances.

Malik Muhammad Suleman for Petitioner

Ms. Muqadass Tahira, Deputy Prosecutor General Punjab

Amir Wakeel Butt for Respondent No.2/Complainant

Khadim, S.I. in person.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 497, Cr.P.C., the petitioner seeks grant of post-arrest bail in case F.I.R. No.96 of 2010, dated 6-3-2010 for offence under section 395, P.P.C. later

on added section 412, P.P.C. registered at Police Station Shakargarh, District Narowal.

2. The learned counsel for the petitioner submits that the petitioner has been implicated on the basis of a supplementary statement of the complainant which was recorded after a delay of three months. That no identification parade was held in order to connect the petitioner with the commission of offence. That a bare reading of the supplementary statement would show that it has not been stated as to how and when the complainant found out that the offence in question had been committed by the petitioner along with the other co-accused.

3. The learned D.P.-G. has opposed the petition and has submitted that a sum of Rs.50,000 has been recovered from the petitioner. One of the co-accused Abbas is still a proclaimed offender. The petitioner has been implicated on the basis of data which was collected after the mobile phones which were snatched from the victims, were recovered by the Investigating Officer. The petitioner has been charged with offences that fall within the prohibitory clause of section 497, Cr.P.C. A bare reading of the F.I.R. would show that the appearance and physical attributes of the accused persons have been given therein. Two other F.I.Rs. have already been registered against the petitioner. Since Challan has been submitted before the learned Trial Court on 30-7-2010 and Charge has been framed there is no occasion for enlarging the petitioner on bail.

4. After adopting the arguments of the learned D.P.-G., the learned counsel for respondent No.2/complainant submits that there is no previous enmity between the complainant and the petitioner. All the victims are respectable and notable persons who would never falsely implicated any person with the commission of an offence.



5. A bare reading of the F.I.R. would show that the petitioner has not been named therein. The petitioner was implicated on the basis of a supplementary statement which was recorded by the complainant after three months of the F.I.R. being lodged. The complainant in his supplementary statement has not stated as to how and when he came to know that the offence in question was committed by the petitioner along with other co-accused. Although Challan has been submitted and Charge has been framed by the learned Trial Court this alone would not be enough to disentitle the petitioner from the concession of bail. An assertion made by the learned counsel for the petitioner that no identification parade has been held in this case has not been negated either by the learned D.P.-G. or the learned counsel for respondent No.2/complainant.

6. The upshot of the above discussion is that this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail-bonds in the sum of Rs.100,000 (Rupees One hundred thousand only) with one surety in the like amount to the satisfaction of the learned Trial Court.

H.B.T./M-381/L Bail granted.

**2012 M L D 1187**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**SAJJAD AHMAD alias SHAHBAZ---Appellant/Petitioner**

**Versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No.1 of 2011, in Criminal Appeal No.1078 of 2010, decided on 29th February, 2011.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 426---Penal Code (XLV of 1860), Ss. 302/337-A(i)/337-F(iii)/ 337-L(2)/148/149--- Qatl-e-amd, shajjah-i-khafifah, ghayr-jaifah-

mutalahimah, other hurt, rioting armed with deadly weapons, unlawful assembly---Suspension of sentence---Conviction of accused on basis of evidence appearing in cross-version case---Validity---Challan case and cross-version case were decided by the Trial Court by means of one judgment and the court had erred in deciding the challan case on the basis of evidence recorded in the cross case, which action was not permissible in law---Trial Court had also observed that the occurrence took place on account of a sudden flare up between the parties leading to a free fight in which both sides received injuries---Trial Court had disbelieved the motive as alleged in the F.I.R., which entitled the accused for suspension of his sentence---Sentence of accused was suspended and he was admitted to bail.

Muhammad Gulzar v. Muhammad Ashraf and 3 others 1981 SCMR 435 and Muhammad Saleem alias Buggi v. The State 2004 YLR 97 rel.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 426---Penal Code (XLV of 1860), Ss. 302/337-A(i)/337-F(iii)/ 337-L(2)/148/149---Qatl-e-amd, shajjah-i-khafifah, ghayr-jaifah-mutalahimah, other hurt, rioting armed with deadly weapons, unlawful assembly---Suspension of sentence---Failure to prove motive---Effect---Where the motive had been disbelieved by the Trial Court, the accused was entitled for suspension of sentence.

Muhammad Saleem alias Buggi v. The State 2004 YLR 97 rel.

Malik Muhammad Saleem and Syed Badar Raza Gilani for Appellant/Petitioner.

Ch. Muhammad Akbar, Deputy Prosecutor General.

Ch. Faqir Muhammad and Muhammad Nadeem Kanju for the Complainant.

**Criminal Miscellaneous No.1 of 2011.**

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---The petitioner Sajjad Ahmed alias Shahbaz son of Abdul Rasheed was tried by the learned Additional Sessions Judge Burewala in case F.I.R. No.182 of 2005 dated 18-6-2005 for offences under sections 302/337-A(i), 337-F(iii), 337-L(ii)/148/149, P.P.C. registered at Police Station Sahuka, Tehsil Burewala District Vehari who, vide impugned judgment dated 30-10-2010, convicted and sentenced the petitioner/appellant as follows:--

**UNDER SECTION 302(b), P.P.C.**

Imprisonment for "Life" with fine of Rs.1,00,000 which if recovered would be payable to the legal heirs of deceased as compensation under section 544-A, Cr.P.C. and in case of default to suffer six months Simple Imprisonment.

Benefit of section 382-B, Cr.P.C. was also extended in favour of the accused/petitioner.

2. The learned counsel for the petitioner submits that mis-carriage of justice has been occasioned by the learned trial Court by deciding the challan case and cross-version case by means of a solitary judgment. In the instant case prejudice has also been caused to the petitioner in as much as the name of the assailant was mentioned as Shahbaz but was subsequently substituted by the name Sajjad Ahmad petitioner (herein) by referring to the evidence which was brought on the record in the cross version case. The motive was totally disbelieved and disregarded by the

trial court while convicting the petitioner. The petitioner who is behind the bars since 30-10-2010 is entitled to the concession of bail.

3. The learned Deputy Prosecutor-General and the learned counsel for the complainant have opposed the petition and submitted that no prejudice was caused to the petitioner although the challan case and the cross version case were decided by means of one judgment as the learned trial court never relied on the evidence adduced in trial court never relied on the evidence adduced in the cross version case to convict the petitioner. The petitioner who earlier remained a proclaimed offender for two years is not entitled to the concession of bail.

4. After hearing the arguments addressed at the bar and going through the judgment of the trial court it is clear that the challan case as well as the cross case were decided by the trial court by means of one judgment. The trial court erred in deciding the challan case on the basis of evidence recorded in the cross case which action is not permissible in terms of law laid down by the august Supreme Court of Pakistan in "Muhammad Gulzar v. Muhammad Ashraf and 3 others" 1981 SCMR 435.

5. The learned trial court while convicting the petitioner stated as follows:--

"The F.I.R. was registered against accused party including Shahbaz and Asif but Shahbaz was corrected as Sajjad and Asif was corrected as Aslam. In cross version, Muhammad Akram complainant had stated that at the time and place of occurrence, he was accompanied by Sajjad Ahmed, hence, the presence of Sajjad accused over there was admitted.

It proves that the name of Sajjad alias Shahbaz was mentioned in the F.I.R. as Shahbaz inadvertently."

6. It is thus clear that the petitioner was convicted while relying on the testimony appearing in the cross case. The trial court, also observed that the occurrence took place on account of a sudden flare up between the parties leading to a free fight in which both sides received injuries. With regard to motive the trial court observed as follows:--

"Hence, the evidence about the motive as alleged in the F.I.R. by the complainant party is non-existent on record. Thus, the motive as alleged in the F.I.R. by the complainant party is shrouded in mystery and not proved."

7. Where the motive has been disbelieved by the trial court the petitioner would also be entitled for suspension of sentence as has been held in "Muhammad Saleem alias Buggi v. The State" (2004 YLR 97 Lahore).

8. For what has been stated above, this petition is allowed, sentence of imprisonment of the petitioner is suspended and he is admitted to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000 (rupees two lacs only) with two sureties in the like amount to the satisfaction of the Deputy Registrar (Judicial) of this Court. The petitioner shall appear before this court on each and every date of hearing till the final disposal of the main appeal.

M.W.A./S-44/L Sentence suspended.

**2012 P L C (C.S.) 319**

**[Lahore High Court]**

**Before Sh. Najam-ul-Hassan and Muhammad Yawar Ali, JJ**

**MARKET COMMITTEE, SAHIWAL**

**Versus**

**Syed ZAIGHAM ALI and others**

I.C.A.No.139 of 2011 in Writ Petition No.2249 of 2011, heard on 20th September, 2011.

**(a) Constitution of Pakistan---**

----Art. 199---Constitutional petition---Delay in filing constitutional petition---Laches---Petitioner filed petition, after a delay of ten years---No plausible explanation for such delay had been filed by the petitioner---Constitutional jurisdiction was discretionary in nature and he who sought equity, must approach the court with clean hands and remain vigilant in asserting for his rights---Constitutional petition filed by the petitioner was liable to be dismissed being suffering from laches.

Mst. Barkat Bibi v. Mst. Salma Bibi and 2 others 2005 CLC 1401; Mazhar-ul-Haq alias Mazhar Abbas v. Ghulam Muhammad and 2 others 2005 CLC 1169 and Khiali Khan v. Haji Nazir and 4 others PLD 1997 SC 304 rel.

**(b) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---**

----R. 17-A---Law Reforms Ordinance (XII of 1972), S.3---Intra-court appeal---Appointment of unemployed child of invalidated/incapacitated civil servant---Son of civil servant, had prayed that a direction be issued to the employer Committee to employ him in place of his father, who had

allegedly been incapacitated---No certificate issued by Medical Officer stating in clear and unequivocal terms that father of petitioner had become incapacitated---Under provisions of S.1 7-A of Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 an unemployed child would become eligible to be appointed in the place of his father only in case his father died while in service or was declared invalidated/incapacitated for further service---Father of petitioner was never declared to be incapacitated person, either by Medical Officer or by the head of the department---Department having not acted in breach of any law or regulation by not appointing the son of the employee in place of his father, intra-court appeal was accepted in circumstances.

Muhammad Ramzan Khalid Joyia for Appellant. Muhammad Iqbal Khan for Respondent No.1.

Malik Muhammad Bashir Lakhesir, A.A.-G. for Respondents Nos.2 to 4.

Date of hearing: 20th September, 2011.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**--- This Intra-Court Appeal filed under section 3 of Law Reforms Ordinance, 1972 is directed against an order dated 27-4-2011 passed by the learned Single Judge in Chamber while disposing of Writ Petition No.2249 of 2011.

2. Briefly stated the facts of the case necessary for the disposal of this Intra-Court Appeal are that respondent No.1 (herein) filed a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 praying therein that a direction be issued to the Market Committee Sahiwal to employ respondent No.1 as Sub-Inspector in place of his father Syed Ashraf Ali Shah under section 17-A of the Punjab Civil Servants (Appointment, and Conditions of Service) Rules, 1974. In the petition it was strongly asserted that Syed Ashraf Ali Shah father of respondent No.1

was incapacitated being a heart patient as a consequence of which respondent No.1 was entitled to the same post that his father was holding. The learned Single Judge in Chamber while perusing the record which was brought to the court room by an official representing the appellant concluded that Syed Ashraf Ali Shah father of respondent No.1 retired on 25-10-2001 being an incapacitated person as a result of which respondent No.1 was entitled to be appointed in his place.

3. The learned counsel for the appellant contends that writ petition . filed by respondent No.1 suffered from laches and was liable to be dismissed on this ground alone. Syed Ashraf Ali Shah father of respondent No.1 served in the ' department from 11-11-1967 to 15-12-2001 whereas respondent No.1 filed a writ petition in the year 2011 after a lapse of ten years. On merits it was contended that respondent No.1 was never declared invalid or incapacitated by any medical board meaning thereby respondent No.1 was not qualified to be appointed in place of his father.

4. The learned counsel for respondent No.1 in rebuttal argued that valuable rights accrued in favour of respondent No.1 when his father became incapacitated and a petition which was filed for enforcement of a right conferred by law could not be defeated merely on the ground that the petition was filed after a delay of ten years. On merits it was contended that the learned Single Judge in Chamber after inspecting the record which was brought by an official representing the appellant rightly concluded that the father of respondent No.1 was incapacitated being a heart patient. No exception could be taken to the relief which was granted to respondent No.1 by the learned Single Judge in Chamber.

5. Whether or not the constitutional petition filed by respondent No.1 under Article 199 of the Constitution of Islamic Republic of Pakistan, . 1973 before the learned Single Judge in Chamber was hit by the principle



of laches is a question which is to be addressed in the first instance. It is an admitted position that respondent No.1 filed a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 after a delay of , ten years. A bare reading of the petition would show that no plausible explanation has been given as to why the petition , was filed after such a long delay. It is trite that constitutional jurisdiction is discretionary in nature and he who seeks equity must approach the court with clean hands and remain vigilant in asserting for his rights as has been held by this court in Mst. Barkat Bibi v. Mst. Salma Bibi and 2 others 2005 CLC 1401. Similarly in Mazhar-ul-Haq alias Mazhar Abbas v. Ghulam Muhammad and 2 others 2005 CLC 1169 this court dismissed a constitutional petition on the principle of laches on the ground that the petitioner had filed a constitutional petition after three months and 25 days of passing of the impugned order. The august Supreme Court of Pakistan in Khiali Khan v. Haji Nazir and 4 others PLD 1997 SC 304 has held that even a constitutional petition against a void order could be dismissed when the petitioner was estopped by his own conduct from challenging the same or if he had been guilty of <sup>A</sup> laches. In the light of case-law referred to above and the facts of the case which can be gleaned from a plain reading of the constitutional petition it can easily be concluded that the constitutional petition was liable to be dismissed since it suffered from laches. While examining the merits of the case it has been observed that there was no certificate issued by any medical officer stating in clear and unequivocal terms that the father of respondent No.1 had become incapacitated. Section 17-A of Punjab Civil Service Laws reads as follows:---

"Notwithstanding anything contained in any rule to the contrary, whenever a Civil Servant dies while in service or is declared invalidated/in-capacitated for further service, any one of his unemployed children may be employed by the Appointing Authority

against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualifications and experience and each child may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee, provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above:

Provided further that one child of a Government Servant who dies while in service or is declared invalidated/incapacitated for further service shall be provided a job against posts in BS-1 to 5 in the department in which the deceased Government Servant was working, without observance of formalities prescribed under the rules/procedure. Provided such child is otherwise eligible for the post."

6. From a bare reading of section 17-A of Punjab Civil Service laws reproduced above it is clear that an unemployed child becomes eligible to be appointed in the place of his father only in case his father dies while in service or is declared invalidated/incapacitated for further service. In order to ascertain as to who is the competent authority authorised to determine whether or not an employee has become incapacitated, we have to go through the provisions of section 442 of Civil Service Regulations (Relating to Pension) which are reproduced below for the sake of reference:---

#### Section 442

"If an officer applying for an Invalid pension' is sixty years old or upwards, no certificate by a Medical Officer is necessary; it suffices for the head of the office to certify to the incapacity of the applicant. Otherwise incapacity for service must be established by a medical certificate."

7. In the present case Syed Ashraf All Shah father of respondent No.1 was never declared to be an incapacitated person either by any Medical Officer or by the head of the department. Respondent No.1 in his petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 failed to establish that the department had acted in breach of law or regulation by not appointing him in place,of his father.

8. For what has been stated above, this Intra-Court Appeal is accepted and the impugned order dated 27-4-2011 passed in Writ Petition No.2249 of 2011 is set aside.

H.B.T./M-343/L

Appeal accepted.

**2012 P L C (C.S.) 606**

**[Lahore High Court]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD NADEEM SHAKIR**

**Versus**

**GOVERNMENT OF PUNJAB, COMMUNICATION AND WORKS**

**DEPARTMENT, LAHORE through Secretary and 5 others**

Writ Petition No.11661 of 2011, decided on 19th September, 2011.

**(a) Punjab Civil Servants Act (VIII of 1974)---**

----S. 9---Constitution of Pakistan, Arts.199 & 212---Constitutional petition---Maintainability---Transfer---Terms and conditions of service---Petitioner had challenged his transfer from one place of working to another---Validity---Transfer of a civil servant was a matter relating to the terms and conditions of service and bar contained in Art.212 of the

Constitution, would be fully attracted---Constitutional petition against transfer was not maintainable.

Khalid Mehmood Wattoo v. Government of Punjab and others 1998 SCMR 2280 and Government of Sindh through Secretary Education and Literacy Department and others v. Nizakat Ali and others 2011 SCMR 592 rel.

### **(b) Constitution of Pakistan---**

----Art. 189---Decision of Supreme Court---Binding nature of---Principles of law enunciated by apex court and all decisions rendered were binding on all other courts.

Province of the Punjab through Secretary, Health Department v. Dr. S. Muhammad Zafar Bukhari PLD 1997 SC 351 rel.

Malik Ghulam Qasim Rijwana for Petitioner.

Malik M. Sohail Iqbal Bhatti, Addl. A.-G. for Respondent.

Khalid Saleem Law Officer for Respondent No.2.

### **ORDER**

**MUHAMMAD YAWAR ALI, J.**--- Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner seeks setting aside of an order dated 27-8-2011 issued by respondent No.1, whereby the petitioner who was working as Deputy Director Architecture Multan was transferred and posted as Deputy Director Architecture Faisalabad.

2. The learned counsel for the petitioner submits that the impugned order of transfer is tainted with mala fide and is liable to be set aside on this ground alone. The impugned order of transfer has been issued in order to oblige respondent No.5 who wields a lot of political influence. The petitioner has always worked meticulously and there is no complaint

pending against him. Since the impugned order has not been passed in the exigency of service, the same is liable to be declared illegal and set aside.

3. The learned law officer has vehemently opposed the petition and submitted that this petition is not maintainable on account of a bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Transfer of a civil servant is a matter relating to the terms and conditions of service and the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 would be fully attracted. The august Supreme Court of Pakistan in Khalid Mehmood Wattoo v. Government of Punjab and others 1998 SCMR 2280 has held that even where an order relating to the terms and conditions of service of a civil servant has been passed on political considerations and is mala fide still the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 would be attracted.

5. It is trite that this court while exercising its extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 would have no jurisdiction to interfere in matters relating to the terms and conditions of service of a civil servant. Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 reads as follows:---

"212. Administrative Courts and Tribunals.--- (1) Notwithstanding anything herein before contained, the appropriate Legislature may by Act {provide for the establishment of} one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of :--

(a) matters relating to the terms and conditions of persons {who are or have been} in the service of Pakistan, including disciplinary matters;

(b) matters relating to claims arising from tortious act of Government, or any person in the service of Pakistan; or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or

(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other Court shall grant an injunction, make any order or entertain any proceeding in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends {and all proceedings in respect of any such matter which may be pending before such other Court immediately before the establishment of the Administrative Court or Tribunal {;other than an appeal pending before the Supreme Court,} shall abate on such establishment):

Provided that the provision of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, {Majlis-e-Shoora (Parliament)} by law extends the provisions to such a Court or Tribunal.

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal.

6. The objection raised by the learned law officer has a lot of force. The merits of the case cannot be gone into by this court without first

determining whether it has the jurisdiction to decide the lis in hand as has been held by the Apex Court in Government of Sindh through Secretary Education and Literacy Department and others v. Nizakat Ali and others 2011 SCMR 592. In the instant case the petitioner has challenged his order of transfer and in the light of the judgments referred to above it can safely be concluded that this court has no jurisdiction to issue a writ in favour of the petitioner.

7. Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 stipulates that the decisions of Apex Court would be binding on all other courts and reads as follows:-

**189. Decisions of Supreme Court binding on other Courts.**---- Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan.

8. Principles of law enunciated by the apex Court and all decisions which are rendered are not only of persuasive value but are also binding on all other courts as has been held in Province of the Punjab through Secretary, Health Department v. Dr. S. Muhammad Zafar Bukhari PLD 1997 SC 351.

9. Since transfer is a matter relating to the terms and conditions of service of a civil servant, the instant petition is held to be not maintainable and stands dismissed.

H.B.T./M-5/L Petition dismissed.

**P L D 2012 Lahore 311**  
**Before Muhammad Yawar Ali and Kh. Imtiaz Ahmad, JJ**  
**BILAL---Applicant**  
**versus**  
**THE STATE and another---Respondents**

Criminal Miscellaneous Application No.2 of 2011 in Criminal Appeal No.104 of 2006, decided on 1st December, 2011.

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 426(1-A)(e) & 439---Penal Code (XLV of 1860), S. 302(b)---Qatl-e-amd---Suspension of sentence---Accused had applied for suspension of sentence for a second time, on grounds of statutory delay in hearing of his appeal, but same was declined by the High Court mainly on the ground that complainant had filed criminal revision for enhancement of sentence of the accused and notice had been issued to him---Validity---Question was whether order of High Court passed in criminal revision, wherein it stated that criminal appeal of accused was to be heard along with the revision, amounted to a notice being issued to the accused in terms of S. 439, Cr. P. C---Only order passed by High Court in criminal revision was that revision was to be heard along with the appeal of the accused, which could not be equated to putting the accused on notice for enhancement of sentence---Nothing on record showed that accused had been responsible for the delay in the hearing of the appeal--- Tentative assessment of observations made by Trial Court showed that accused/ was not a hardened or desperate criminal---sentence of accused was suspended in circumstances and he was released on bail.

**(b) Criminal Procedure Code (V of .1898)-**

426-Penal Code (XLV of 1860), S. 302(b)---Qatl-e-amd--- pension of sentence---Scope---Notices issued to accused for enhancement of



sentence---Inappropriate to suspend the sentence of an accused, who was earlier sentenced to imprisonment for life and notices had been issued by the High Court for enhancement of his sentence.

Mst. Parveen Akhtar v. Niaz Ali and another 2011 SCMR 1107 ref.

**(c) Criminal Procedure Code (V of 1898)---**

---Ss. 439---Penal Code (XLV of 1860), S. 302(b)---Qatl-e-Amd---Revision---Notice of proceedings to applicant Principles Joint reading of Ss.439(2) and 439(6), Cr.P.O showed that mere pendency of a revision petition which was in the knowledge of the applicant would not mean that notice had been issued to the applicant for enhancement of his sentence---Only after criminal revision for enhancement for sentence was admitted to regular hearing, could it be said that the accused had been put on notice as to why his sentence should; not be enhanced.

**(d) Criminal Procedure Code (V of 1898)---**

----S. 439(2) ---Penal Code (XLV of 1860), S.302(b)---Qatl-e-Amd---Revision---Enhancement of sentence-Service of notice of revision petition---No particular manner of service to accused has been prescribed in S.439(2), Cr.P.C. however, in the absence of a prescribed procedure under section 439(2) Cr.P.O it would be incumbent upon the court to issue a show-cause notice to the accused/convict regarding enhancement of sentence.

Javed Ahmad alias Jaida v. The State and another 1978 SCMR 114 ref.

**(e) Criminal Procedure Code (V of 1898)---**

----S. 439---Penal Code (XLV of 1860), S. 302(b)---Qatl-e-Amd Enhancement of sentence---Issuance of show-cause notice under S.439 Cr.P.C---Mere presence of accused during pendency of appeal would not amount to a substantial compliance of mandatory requirement that

sentence of an accused cannot be enhanced without issuing notice to him.

Nazal alias Nazoo v. The State 2000 PCr.LJ 2075 ref.

Ch. Saghir Ahmed for Applicant.

Malik M. Jaffar Arian Deputy Prosecutor General.

Sh. Jamshed Hayat for the Complainant.

## **ORDER**

Criminal Miscellaneous Application M-2/2011

The applicant was tried by the learned Additional Sessions Judge, Multan in a private complaint along with his co-accused under sections 324/302/109/148/149, P.P.C. who vide judgment dated 27-2-2006 convicted and sentenced the applicant as follow:

### **Under section 302(b) P.P.C.**

(i) Imprisonment for "Life".

(ii) Rs.2,00,000 (rupees two lacs) as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C. and in default of payment of compensation to further undergo six months' R.I. Benefit of section 382-B, Cr.P.C. was also extended in favour of the applicant.

2. The learned counsel for the applicant seeks suspension of sentence of the applicant on-statutory grounds by pressing into service section 426(1A)(C), P.P.C. maintaining that the applicant is behind the bars since his arrest and there is no possibility of the appeal being heard and decided in the near future. The applicant is a previous non-convict. The applicant after being convicted and sentenced on 27-2-2006 filed a Criminal Appeal No.104 of 2006 in the year; which has not been decided.

3. The facts of the case which need to be stated very briefly for the disposal of this petition are that after being convicted the applicant challenged his conviction by means of Criminal Appeal No.104 of 2006 which has not been decided till date. The applicant applied for suspension of sentence but the same was declined by this court vide order dated 11-11-2010. The applicant again applied for suspension of sentence and the same was also declined by this court vide order dated 15-9-2011 mainly on the ground that the complainant has filed a criminal Revision No.145 of 2006 for enhancement of sentence of the applicant from life imprisonment to death wherein notice has been issued by this court to the applicant.

4. The learned counsel for the applicant submits that this court has erred in turning down an earlier application filed by the applicant for suspension of sentence on the ground that notice has been issued in a Criminal Revision for enhancement of sentence by this court, as this is factually incorrect. No notice has ever been issued by this court to the applicant in a Criminal Revision filed for enhancement of sentence by the complainant. The applicant was convicted on 27-2-2006, he filed a Criminal Appeal No.104 of 2006 in the year 2006 which has not been decided till date hence the applicant is entitled to be released on bail on statutory grounds.

5. The learned Deputy Prosecutor-General as well as the learned counsel for the complainant have opposed the petition and submitted that the applicant was "put to notice" by this court in Criminal Revision No.145 of 2006 vide order dated 10-4-2006 hence there are no good grounds for suspending the sentence of the applicant.

6. After going through an order of this court dated 15-9-2011 it is clear that the sentence of the applicant was not suspended mainly on the

ground that notice for enhancement of sentence has been served on the applicant in Criminal Revision No.145 of 2006 while placing reliance on *Mst.Parveen Akhtar v. Niaz Ali and another* 2011 SCMR 1107. The august Supreme Court of Pakistan in the case referred to above had held that it would be inappropriate to suspend the sentence of an accused, earlier sentenced to imprisonment for life where notice had been issued by the High Court for enhancement of his sentence. Without cavil to a principle of law referred to above by the august Supreme Court of Pakistan the controversy in hand which is to be resolved is whether an order of this court passed in Criminal Revision No.145 of 2006 "To be heard along with Criminal Appeal No.104 of 2006" amounts to a notice being issued to the applicant in terms of section 439, Cr.P.C. A joint reading of sections 439(2) and 439(6) of the Criminal Procedure Code (V of 1898) would show that mere pendency of a revision petition which is in the knowledge of the applicant would not mean that notice has been issued to the applicant for enhancement of his sentence. Only after a Criminal Revision for enhancement of sentence is admitted to regular hearing can it be said that the accused has now been put to notice as to why his sentence should not be enhanced by this court. The august Supreme Court of Pakistan in *Javed Ahmad alias Jaida v. The State and another* 1978 SCMR 114 held that no particular manner of service to the accused has been prescribed in section 439(2), Cr.P.C. (V of 1898), however, in the absence of a prescribed procedure under section 439(2), Cr.P.C. it would be incumbent upon a court to issue a show cause notice to the accused/convict regarding the enhancement of sentence. Mere presence of an accused during the pendency of an appeal would not amount to a substantial compliance of a mandatory requirement that sentence of an accused cannot be enhanced without issuing notice to him as has been held in *Nazal alias Nazoo v. The State* 2000 PCr.LJ 2075.

7. It is trite that this court while hearing a revision petition under section 439, Cr.P.C. (V of 1898) would ordinarily not enhance the sentence awarded by the trial court unless the findings of the trial court are, found to be perverse which have resulted in grave miscarriage of justice. Where the only order passed by this court in a Criminal Revision for enhancement of sentence of an accused is "To be heard along with? Criminal Appeal No.104 of 2006", it can by no stretch of imagination be said that the accused has been put to notice for enhancement of sentence.

8.??? In normal course of events the applicant would be entitled to bail on the ground that more than two years have gone by and there is no likelihood of hearing of the appeal filed by the applicant in the near future. It has not been argued by the learned Deputy Prosecutor-General or the learned counsel for the complainant that the applicant is a previously convicted offender, a hardened desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life. There is nothing on the record to show that the applicant has been dragging his feet and has been instrumental in causing delay in hearing of the main criminal appeal. The main Criminal Appeal was admitted to hearing on 20-3-2006 and has not been decided till date. The trial court while convicting the applicant observed that the motive has not been established and proved beyond doubt. The trial court has also observed that it cannot be said with certainty as to whether or not the fatal injury could only be attributed to the applicant. On a tentative assessment? which is to be made at this stage, this court is not of the opinion that the applicant is a hardened or dangerous criminal.

9.??? For what has been stated above, this petition is allowed, sentence of imprisonment of the petitioner is suspended and he is admitted to bail subject to his furnishing bail bonds in the sum of

Rs.2,00,000 (rupees two lacs) with one surety in the like amount to the satisfaction of the Deputy Registrar (J) of this Court. The applicant is directed to appear before this Court on each and every date of hearing till the final disposal of the main appeal.

M.W.A./B-5/L

Sentence suspended.

**2012 Y L R 1603**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD MUMTAZ---Petitioner**

**versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No.5035-B of 2011, decided on 15th February, 2012.

**(a) Criminal Procedure Code (V of 1898)---**

---S. 497---Penal Code (XLV of 1860), Ss.302/34--- Qatl-e-amd, common intention---Bail, grant of---Delay in conclusion of trial---Trial of accused had not commenced for last more than two years---Accused had been attributed a fatal injury but court had no option but to allow bail in case the accused was so entitled by virtue of section 497 Cr.P.C, on basis of delay in conclusion of his trial---Accused was not a previously convicted offender for an offence punishable with death or imprisonment for life nor was he an accused of an act of terrorism punishable with death or imprisonment for life---No record had been provided to the High Court to demonstrate that the accused was a hardened, desperate or dangerous criminal or that the conclusion of the trial had been delayed by some act of the accused---Contention of complainant was that accused was a hardened, desperate and dangerous criminal as in the present case he fired upon the deceased and caused his death, but such contention did not hold any water as it would be incumbent on the prosecution to establish that there were allegations of similar nature or

any other dastardly acts stated to have been committed by the accused person---In absence of material which would establish that the accused has previously also been guilty of having committed a heinous offence or having committed a serious offence or any dastardly act out of sheer desperation, it would be wrong to deny bail to the accused solely on the ground that in one solitary case he fired from a pistol and caused a fatal injury---Onus was on the prosecution and the complainant to bring on record some material other than the case (in hand) to show that the accused was a hardened, desperate and dangerous criminal---Bail petition of accused was allowed and he was admitted to bail.

Moundar and others v. The State PLD 1990 SC 934; Zahid Hussain Shah v. The State PLD 1995 SC 49 and Amir v. The State PLD 1972 SC 277 **rel.**

**(b) Criminal Procedure Code (V of 1898)---**

----S. 497---Penal Code (XLV of 1860), Ss.302/34---Qatl-e-amd, common intention---Bail, grant of---Delay in conclusion of trial---Burden of proof---Onus was on the prosecution as well as the complainant to bring on record some material other than the present case to show that the accused was a hardened, desperate and dangerous criminal.

Habib Ullah Shakir and Mian Muhammad Ashfaq Hussain for Petitioner.

Ch. Muhammad Akbar, D.P.G. for the State.

Sardar Noor Akbar Khan and Rafiq A.S.-I. for the Complainant.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 497, Cr.P.C. the petitioner seeks post-arrest bail in case F.I.R. No.412 of 2009 dated 26-9-2009 for offences under sections 302/34, P.P.C. registered at Police Station Makhdoom Rasheed District Multan.

2. According to the F.I.R. on 22-9-2009 the petitioner along with other co-accused stopped the deceased Muhammad Rafique who was

travelling on a motorcycle, the petitioner who was armed with a pistol fired at and caused a fatal injury to the deceased. Subsequently the petitioner and other co-accused fled from the scene of occurrence. The occurrence was witnessed by Shahid Khan and Mazhar Abbas.

3. The learned counsel for the petitioner at the very outset has submitted that he is seeking bail on statutory grounds. The petitioner was arrested on 1-10-2009, more than two years have gone by but the trial has not commenced. The petitioner is now entitled to bail on account of the latest amendment incorporated in section 497, Cr.P.C.

4. The learned Deputy Prosecutor-General and the learned counsel for the complainant have vehemently opposed the petition and submitted that the deceased Muhammad Rafique died on account of a firearm injury which was caused by the petitioner. The pistol which was used by the petitioner during the commission of offence has been recovered from him. The petitioner has committed a heinous offence and has been charged with an offence which falls within the prohibitory clause of section 497, Cr.P.C. Since the petitioner fired at the deceased, injured him and ultimately caused his death it can safely be concluded that he is a hardened, desperate and a dangerous criminal not entitled to the concession of bail.

5. I have considered the submissions made by the learned counsel for the parties and have also gone through the record. The petitioner was arrested on 1-10-2009. More than two years have gone by but the trial has not commenced so far. The petitioner has sought bail only on account of an amendment incorporated in section 497, Cr.P.C. which reads as follows:--

**Amendment of section 497, Act V of 1898:--**

In the said Code, in section 497, in subsection (1),---

(i) in the first proviso, after the word "Years" the words "**or any woman**" shall be inserted;

(ii) the second, third and fourth provisos shall be omitted; and



(iii) in the fifth proviso, for the full stop at the end a colon shall be substituted and thereafter the following provisos shall be added, namely:-

"Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail-

(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or

(b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded:

Provided further that the provisions of the foregoing proviso shall not apply to a previously convicted offender for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life,"

6. The clear effect of the newly-added amendment in section 497, Cr.P.C. is that an accused would be entitled to bail if more than two years have gone by and the trial has not concluded unless this court comes to the conclusion that the delay in the conclusion of the trial can be attributed to the accused, the accused is a previously convicted offender for an offence punishable with death or imprisonment for life or is a hardened, desperate or dangerous criminal or is an accused of an act of terrorism punishable with death or imprisonment for life. Although, the petitioner has been attributed a fatal injury to the deceased this court

would have no option but to allow bail in case the petitioner is so entitled by virtue of the newly enacted amendment of section 497, Cr.P.C., keeping in view the law laid down by the august Supreme Court of Pakistan in **Moundar and others v. The State PLD 1990 Supreme Court 934** and **Zahid Hussain Shah v. The State PLD 1995 Supreme Court 49**. Admittedly the petitioner is not a previously convicted offender for an offence punishable with death or imprisonment for life nor is he an accused of an act of terrorism punishable with death or imprisonment for life. No record has been provided to this court to demonstrate that the petitioner is a hardened desperate or dangerous criminal or that the conclusion of the trial has been delayed by some act of the petitioner. An argument raised by the learned counsel for the complainant that the petitioner is essentially a hardened, desperate and dangerous criminal as he fired upon and caused the death of the deceased would not hold any water. It would be incumbent on the other side to establish that there are allegations of similar or any other dastardly acts stated to have committed by the accused person. In the absence of material which would establish that the petitioner has previously also been guilty of having committed a heinous offence or having committed a serious offence or any dastardly act out of sheer desperation, it would be wrong to deny bail to the petitioner solely on the ground that in one solitary case he fired at and caused a fatal injury with a pistol. After incorporation of the latest amendment the onus would be on the prosecution as well as the complainant to bring on record some material other than the case in hand to show that the petitioner is a hardened, desperate and a dangerous criminal. The right of the petitioner to get bail on account of the amendment incorporated in section 497, Cr.P.C. is not left to the discretion of the court but is controlled by that provision. In any case law can never be stretched in favour of the prosecution as has been held by the august Supreme Court of Pakistan in **Amir v. The State PLD 1972 SC 277**.

7. For what has been stated above, this petition is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000 (rupees two lacs) with one surety in the like amount to the satisfaction of the learned trial Court.

M.W.A./M-94/L Bail granted.

**2012 YLR 2374**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**WAQAR ALI alias BOADI---Petitioner**

**Versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No.7045-B of 2012, decided on 8th June 2012.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 497---Penal Code (XLV of 1860), Ss.392 & 411--Robbery, dishonestly receiving property stolen---Bail, refusal of---F.I.R. registered against an unknown accused---Graphic description and material particulars of the accused provided therein--- Effect--- Allegation against accused was that he snatched a motorcycle belonging to the complainant while armed with a weapon---Contentions of the accused were that he had not been named in the F.I.R. and was implicated with the commission of the offence through the supplementary . statement of the complainant, recorded after six days of the occurrence; that the F.I.R. was lodged with a delay of one day; that no identification parade was held to connect the accused with the commission of the offence, and that no private person was co-opted at the time of the recovery raid, which was in violation of S.103, Cr.P.C---Validity--Although the F.I.R. was registered against an unknown person but the material particulars and graphic description of the accused were given in it---F.I.R. was lodged on the next day of the occurrence, therefore, it could

not be said that same was Lodged with an inordinate delay---Motorcycle belonging to the complainant was recovered from the accused---Accused would not get any benefit of S. 103, Cr.P.C, as he himself led to the recovery of the motorcycle in question, which was snatched from the complainant---Accused had been charged with S. 392, Cr. P. C, which fell within the prohibitory clause of S. 497, Cr.P.C---Bail petition of the accused was dismissed, in circumstances.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 103---Penal Code (XLV of 1860), Ss.392 &' 411--Robbery, dishonestly receiving property stolen---Search to be made in presence of witness---Scope---Section 103, Cr. P. C, would apply in a case where the police officials conducted a search of a premises to recover a stolen article but not where the stolen article was recovered on the pointation of the accused.

Gulsher and another v. The State 2004 YLR 602; Ali Khan and another v. The State 2010 PCr.LJ 11 and Riaz Hussain v. The State 2010 MLD 1127 rel.

Zia ur Rehman Chaudhry for Petitioner.

Ch. Muhammad Ishaq, D.P.G. for Respondent.

Memo for the Complainant.

Shakhawat Ali A.S.I.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**--Through this petition filed under section 497, Cr.P.C. the petitioner Waqar Ali alias Boadi son of Agha Idrees seeks post arrest bail in case F.I.R. No.199 of 2012 dated 27-2-2012 for offense under section 392/411, P.P.C. registered at Police Station Garden Town, District Lahore.

2. According to the F.I.R. on 26-2-2012 at 4-50 p.m. an unknown person armed with a pistol snatched a motorcycle Honda CG.125 Registration No .LEO-808 belonging to the complainant. A graphic description of the accused person was also given in the F.I.R.

3. The learned counsel for the petitioner submits that the petitioner has not been named in the F.I.R. and was implicated with the commission of offence by the complainant by getting his supplementary statement recorded after six days of the occurrence. The F.I.R. was lodged with a delay of one day. No identification parade was held to connect the petitioner with the commission of offence. No private person was co-opted at the time of raid in Violation of section 103, Cr.P.C. The petitioner is innocent and has been falsely roped in this case.

4. The learned Deputy Prosecutor-General has opposed the petition and submitted that a graphic description of the .accused was given while getting the F.I.R recorded. A motorcycle which was snatched from the complainant was recovered from the petitioner. The petitioner has been charged with an offence which falls within the prohibitory clause of section 497, Cr.P.C, hence the petitioner is not entitled to the concession of bail.

5. No one is present on behalf of the complainant in spite of being informed about the fixation of the case by Sakhawat Ali A.S.-I.

6. After going through the arguments advanced by the learned counsel for the petitioner, the learned Deputy Prosecutor General and perusing the record of the case, it is clear- that the F.I.R. was registered against an unknown person, however, the material particulars and a graphic description of the accused was given in it. The F.I.R. was lodged on the very next day of the occurrence, hence it cannot be said that the same was lodged with an inordinate delay. A motorcycle Honda CG.125 Registration No.LEO-808 belonging to the complainant was recovered from the

petitioner. During the investigation the complainant identified the motorcycle recovered from the petitioner to be his own. The petitioner would not get any benefit of section 103, Cr.P.C as he himself led to the recovery of the, motorcycle which was snatched from the complainant. Section 103, Cr.P.C. would apply in a case where the police officials conduct a search of a premises to recover a stolen article but not where a stolen article is recovered on the pointing out of the accused as has been held in Gulsher and another v. The State 2004 YLR 602, Ali Khan and another v. The State 2010 PCr.LJ 11 and Riaz Hussain v. The State 2010 MLD 1127. The complainant whose motorcycle was snatched by the petitioner on gun-point while travelling on a public road has been charged under section 392, P.P.C, an offence which falls within the prohibitory clause of section 497, Cr.P.C. There are no grounds for taking a lenient view in this case as a result of which this petition fails and is dismissed.

MWA/W-9/L

Bail dismissed.

**PLJ 2012 Cr.C. (Lahore) 198**

**[Multan Bench Multan]**

**Present: Muhammad Yawar Ali, J.**

**MUHAMMAD ZESHAN--Petitioner**

**versus**

**STATE and another—Respondents**

CrI. M. 3204-B of 2011, decided on 16.9.2011.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 392/411--Bail, grant of--Previous non-convict--No criminal cases were pending against him--No allegation against him that he had threatened the prosecution witnesses or the complainant with dire consequences after the commission of offence--

Petitioner was entitled to the concession of bail on statutory ground--Bail allowed. [P. 199] A

Khawaja Qaiser Butt, Advocate for Petitioner.

Ch. Muhammad Akbar, D.P.G. for State.

Malik M.Usman Bhatti, Advocate for Respondent No. 2/Complainant.

Date of hearing: 16.9.2011.

### **Order**

Through this petition filed under Section 497 Cr.P.C the petitioner seeks post arrest bail in case FIR No. 104/2010 dated 16.03.2010 for offences under Sections 392/411 PPC registered at Police Station City Karor Pacca District Lodhran.

2. The learned counsel for the petitioner seeks post arrest bail on statutory grounds and submits that the petitioner was arrested on 31.03.2010. More than one year has lapsed without conclusion of the trial. The petitioner is not a previous convict. No case is pending against him in any Anti-Terrorism Court. The delay in conclusion of trial cannot be attributed to the petitioner.

3. The learned Deputy Prosecutor General as well as the learned counsel for Respondent No. 2 have opposed this petition and submitted that the petitioner earlier applied for bail and the same was declined by this Court on 19.10.2010 while disposing of. Criminal Miscellaneous No. 3790-B-2010. The challan has been submitted before the trial Court and there is every likelihood that the trial would be concluded in the near future. Hence there are no good grounds for allowing bail to the petitioner.

4. In normal course of events the petitioner would be entitled to grant of bail on the ground that he is languishing in Jail since 31.03.2010. More than one year has gone by but the trial has not been concluded till date. There is nothing on the record to show that the petitioner is a previous convict. No case is pending against the petitioner before any Anti-Terrorism Court. The delay in conclusion of trial has primarily not been

occasioned by any act of the petitioner or any one acting on his behalf. On a tentative assessment which is to be made at this stage this Court is not of the opinion that the petitioner is a hardened, desperate or dangerous criminal. There is no allegation against the petitioner that he has threatened the prosecution witnesses or the complainant with dire consequences after the commission of offence. The petitioner is a previous non-convict and no other criminal cases are pending against him. In this view of the matter, the petitioner is entitled to the concession of bail on statutory grounds.

5. For what has been stated above, this petition is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (rupees one lac) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail allowed.

**PLJ 2012 Cr.C. (Lahore) 786**

**Present: Muhammad Yawar Ali, J.**

**SHERA MASIH--Petitioner**

**versus**

**STATE and another—Respondents**

Crl. Misc. No. 12189-B of 2012, decided on 24.9.2012.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860)--Ss. 302, 376, 201, 148 & 149--Bail, grant of--Principle of consistency--No one saw the petitioner committing any offence as referred to in the FIR--Case of the petitioner was at par with that of his co-accused who had earlier been allowed bail by High Court--On the principal of consistency and parity, the petitioner would also be entitled to bail. [P. 787] A

2008 SCMR 173.

Syed Afzal Shah Bukhari, Advocate for Petitioner.



Ch. Muhammad Akram Tahir, D.D.P.P. for Respondent.

Nemo for Complainant.

Date of hearing: 24.9.2012.

**Order**

Through this petition filed under Section 497, Cr.P.C., the petitioner, Sher Masih seeks post-arrest bail in case FIR No. 376/2012 for offences under Sections 302, 376, 201, 148, 149, PPC registered at Police Station Saddar Kasur District Kasur.

2. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely roped in this case. There is nothing on record to connect the petitioner with the commission of offence. No one saw the occurrence taking place. A co-accused Tariq, with a similar role had been allowed bail by this Court.

3. The learned Deputy Prosecutor General has opposed the petition and submitted that the petitioner has committed a heinous offence, hence, he is not entitled to the concession of bail. However, in all fairness, the learned Deputy Prosecutor General has pointed out that the petitioner has been found guilty for having committed an offence under Section 201, PPC but not under Sections 302, 376, 148, 149, PPC.

4. No one has entered appearance on behalf of the complainant inspite of the fact that the name of the learned counsel for the complainant duly reflects in the cause list.

5. After hearing the arguments which have been advanced and going through the record of the case, it is clear that no one saw the petitioner committing any offence as referred to in the FIR. The case of the petitioner is at par with that of his co-accused Tariq, who has earlier been allowed bail by this Court on 15.08.2012 in Crl. Misc.9039-B-2012. On the principal of consistency and parity, the petitioner would also be entitled to bail in terms of law laid down by the august Supreme Court of Pakistan in Muhammad Daud and another versus The State and another (2008

S.C.M.R. 173). The learned Deputy Prosecutor General, in all fairness, has pointed out that as per the investigation which has taken place the petitioner is not guilty of having committed an offence under Sections 302, 376, 148, 149, PPC. An assertion made by the learned counsel for the petitioner that the petitioner is a previous non-convict has not been negated by the learned Deputy Prosecutor General. As the Challan has been submitted before the learned trial Court, it can be inferred that the petitioner is no more required for the investigation of the case.

6. For what has been stated above, this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (rupees one lac only) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail allowed.

**PLJ 2012 Cr.C. (Lahore) 813**

**Present: Muhammad Yawar Ali, J.**

**TARIQ--Petitioner**

**versus**

**STATE and another—Respondents**

CrI. Misc. No. 9039-B of 2012, decided on 15.8.2012.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 376, 201, 148 & 149--  
Bail, grant of--Petitioner was a previous non-convict no more required for  
the investigation of the case--Held: It is trite that bail cannot be withheld  
as a measure of punishment--Bail accepted. [P. 814] A

2011 SCMR 161, ref.

Syed Afzal Shah Bukhari, Advocate for Petitioner.

Miss Muqadis Tahira, A.P.G. for State.

Hafiz Rizwan Aziz, Advocate for Complainant.

Date of hearing: 15.8.2012.

## **Order**

Through this petition filed under Section 497, Cr.P.C., the petitioner, Tariq seeks post-arrest bail in case FIR No. 376/2012 dated 17.05.2012 for offences under Section, 302, PPC later on added Sections 376, 201, 148, 149, PPC registered at Police Station Saddar Kasur, District Kasur.

2. After hearing the arguments advanced by the learned counsel for the parties and perusing the available record, it is clear that no one saw the petitioner committing any offence as referred to in the FIR. The complainant while getting recorded his supplementary statement on 24.05.2012 merely stated that he had reasons to suspect that the offence has been committed by the petitioner alongwith other co-accused. The petitioner stands exonerated by the Investigating Officer to the extent of murder and rape of late Mst. Ruqia Bibi as is evident from the bare reading of a case Diary No. 13 dated 02.06.2012. The learned Additional Prosecutor General, in fairness has pointed out that there is nothing on record to connect the petitioner with the commission of offence. The petitioner is a previous non-convict no more required for the investigation of the case. It is trite that bail cannot be withheld as a measure of punishment as has been held by the august Supreme Court of Pakistan in *Abid Ali alias Ali versus The State* (2011 SCMR 161).

3. For what has been stated above, this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (one lac only) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail accepted.

**2013 C L D 531**

**[Lahore]**

**Before Shahid Waheed and Muhammad Yawar Ali, JJ**

**GHULAM ASGHAR KHAN and 3 others---Appellants**

**Versus**

**BANK OF PUNJAB---Respondent**

F.A.O. No.4 of 2011, decided on 10th December, 2012.

**Financial Institutions (Recover of Finances) Ordinance (XLVI of 2001)-**

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---Ss. 9(5), 12 & 22---Suit for recovery of finance---Suit filed by the plaintiff bank, having been decreed ex parte by the Banking Court against the defendants they filed application under S.12 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 which was dismissed--  
-Validity---Application for setting aside ex parte judgment and decree which was to be filed within 10 days of the impugned order, was filed after more than 2 months---Defendants had failed to explain the delay of each and every day in filing application for setting aside ex parte judgment and decree---Record had revealed that service was duly effected upon the defendants---Defendants having failed to disclose any sufficient cause for recalling of ex parte judgment and decree, impugned judgment of the Trial Court did not warrant any interference.

Abdul Rahim Patel v. Habib Bank Limited through Branch Manager and another 2008 CLD 701 and M. Afzal v. Allied Bank of Pakistan Ltd. and another 2003 CLD 765 rel.

Sardar Riaz Karim for Appellants.

Muhammad Saleem Iqbal for Respondent.

## **ORDER**

The appellants, through this appeal under section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 have called in question the order dated 4-12-2010 passed by the learned Banking Court-I, Multan whereby appellants' application under section 12 of the above said Ordinance was dismissed.

2. Briefly the facts of the case are that the respondents filed a suit for recovery of Rs.12,663,877.40 against the appellants which was decreed by the learned Judge Banking Court-1, Multan vide ex parte judgment and decree dated 9-12-2009. The appellants being aggrieved, on 18-3-2010 filed an application under section 12 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 for recalling of ex parte judgment and decree dated 9-12-2009. The respondents controverted the averments made in the application by means of reply dated 17-4-2010. The learned Judge Banking Court after granting opportunity of hearing to the parties dismissed the application vide order dated 4-12-2010. Hence, this appeal.

3. Learned counsel for the appellant submits that the appellants were never served properly in terms of section 9(5) of the Financial Institution (Recovery of Finances) Ordinance, 2001; that no notice through registered post acknowledgment due was sent to the appellants and this fact finds support from the record which does not contain the acknowledgment card; that the service effected through the bailiff is sham; and, that application filed by the appellants under section 12 of the above said Ordinance was within the stipulated time but the learned trial Court misconstrued the facts and also misapplied the provisions of law while dismissing the application vide impugned order dated 4-12-2010.

4. Conversely, the learned counsel for the respondents has opposed this petition and contends that no cogent reason was given by the appellants in their application filed under section 12 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 for setting aside the ex parte judgment and decree. He further contends that service was effected on the appellants in accordance with the modes prescribed in section 9 of the above said Ordinance and, therefore, learned Judge Banking Court rightly dismissed the application through the impugned order.

5. We have heard the learned counsel for thy; parties and perused the record.

6. As per para 2 of the application filed by the appellants under section 12 of the Financial institution (Recovery of Finances) Ordinance, 2001 the appellants on 6-3-2010 got knowledge of the ex parte judgment and decree dated 9-12-2009. After getting knowledge, the appellants filed the above said application on 18-3-2010. They were required to explain the delay of each and every day in filing application under section 12 of the Financial institution (Recovery of Finances) Ordinance, 2001. The perusal of the application shows that the appellants have not explained the delay of each day. This defect is fatal for maintaining the application under Section 12 of the above said Ordinance for recalling of ex parte judgment and decree and in this regard reference may be made to the judgment rendered in the case of ABDUL RAHIM PATEL v. HABIB BANK LIMITED through Branch Manazer and another (2008 CLD 701) and M. AFZAL v. ALLIED BANK OF PAKISTAN LTD. and another (2003 CLD 765).

7. Besides above, Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 prescribes that service can be effected on the defendants through any one of the given mode and one of them is substituted service to be effected by publication of summons in one Urdu

language and one English language daily newspaper. The perusal of record reveals that this service was duly effected upon the respondents. In this scenario, the appellants had failed to disclose any sufficient cause for recalling of ex parte judgment and decree passed by the learned Trial Court and, therefore, order impugned in this appeal does not warrant any interference.

8. In view of above, this appeal being without any merit stands dismissed.

HBT/G-50/L Appeal dismissed.

**2013 P Cr. L J 267**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**WARIS ALI RAZA---Petitioner**

**Versus**

**The STATE and 4 others---Respondents**

Writ Petition No.15283 of 2012, heard on 19th June, 2012.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 54---When Police may arrest without warrant---Scope---No one can be arrested under S.54, Cr.P.C. unless the Police authorities have received credible information or have reasonable suspicion qua the person sought to be arrested---Section 54, Cr.P.C. has not been enacted to cater for the whims of a Police Officer.

Syed Mohsan Ali Shah v. S.H.O. P.S. Garh Maharaja Tehsil Shorkot District Jhang 1995 MLD 771 ref.

**(b) Criminal Procedure Code (V of 1898)---**

----S. 54--- When police may arrest without warrant--- Object and scope--- Words "reasonable suspicion" used in S.54, Cr.P.C. do not mean that a Police Officer can proceed on mere conjectures and surmises---Object of S.54, Cr.P.C. is to give wide powers to Police Officer to arrest any person involved in the commission of a cognizable offence, if he has a reasonable basis to suspect his involvement in a cognizable offence.

Mazharuddin v. The State 1998 PCr.LJ 1035 ref.

**(c) Penal Code (XLV of 1860)---**

----Ss. 324/353/365/427/283/395/148/149---Criminal Procedure Code (V of 1898), S.54---Constitution of Pakistan, Art.199---Constitutional petition---Attempt to commit qatl-e-amd, assault or criminal force to deter public servant from discharge of his duty, kidnapping or abduction for wrongful confinement, dacoity, rioting armed with deadly weapons---Action of the Police authorities causing the arrest of the accused and holding of an identification parade had been impugned in the petition---Four accused persons had been apprehended by the Police authorities after having received information that they had abducted a Police Officer and had also pelted stones at the Police---Contents of the Case Diary had revealed the said facts, which were not to be dilated upon at length, lest it might prejudice the case of accused---Holding of an identification parade was a part of the process of investigation, which could not be stopped at this stage---No directions could even be given to the Police Officials as to how and in what manner investigation in a case was to take place---High Court while seized of a petition filed under Art.199 of the Constitution could not assume the role of an Investigator, as the authority to register and



investigate a criminal case vested in the Police and not in a court---Petition was dismissed in circumstances.

Syed Mohsan Ali Shah v. S.H.O. P.S. Garh Maharaja Tehsil Shorkot District Jhang 1995 MLD 771; Mazharuddin v. The State 1998 PCr.LJ 1035 and Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142 ref.

**(d) Constitution of Pakistan---**

----Art. 199---Constitutional jurisdiction---Scope---Investigation---High Court while seized of a petition filed under Art.199 of the Constitution cannot assume the role of an Investigator, as the authority to register and investigate a criminal case vests in the Police, and not in a court.

Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142 ref.

Abid Hassan Minto for Petitioner.

Miss Samia Khalid, Assistant Advocate-General Punjab and Muhammad Iqbal, Inspector for the State.

Date of hearing: 19th June, 2012.

**JUDGMENT**

**MUHAMMAD YAWAR ALI, J.**---The learned counsel for the parties have no objection if this case be treated as "Pacca Case" and decided on merits.

2. The facts of the case which need to be stated for the disposal of this petition are that an F.I.R. No.307 of 2012 dated 16-5-2012 for offences under sections 324/353/365/427/283/395/148/149, P.P.C. was

registered against 31 nominated accused and 200 unknown persons at Police Station Saddar Muridke District Sheikhpura. On 19-5-2012 an application was filed by the concerned official of Police Station Saddar Muridke District Sheikhpura before the Magistrate Section 30 Ferozewala stating therein that the police authorities had reasons to believe Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob were amongst the 200 unknown persons who had committed the offence, hence an identification parade ought to be conducted. On 19-5-2012 the learned Judicial Magistrate Section 30 Ferozewala directed that an identification parade be held in respect of the persons named above as the police authorities had good reasons to suspect that they had committed a cognizable offence. The petitioner being aggrieved filed a revision petition which was dismissed in limine by the learned Additional Sessions Judge Ferozewala District Sheikhpura on 25-5-2012 after holding that the court had no power to interfere or stop the process of investigation.

3. The learned counsel for the petitioner submits that no credible information which had been duly verified was ever received by the police officials prior to arresting the detenus Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob. Section 54 of Criminal Procedure Code 1898 provides that the police authorities cannot arrest any person on their own whim. In the F.I.R. it has been stated that 31 nominated and 200 unknown persons had committed an offence. There was nothing on the record to show that the detenus Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob were amongst the 200 unknown persons who had committed a cognizable offence hence they could not be arrested for the purposes of holding of an identification parade. The impugned action of the police authorities causing the arrest of the detenus and holding of an identification parade would also militate against a right guaranteed by Article 10 of the Constitution of Islamic Republic of Pakistan 1973. The learned Magistrate Section 30 Ferozewala as well as

the learned Additional Sessions Judge Ferozewala in their respective order dated 19-5-2012 and 25-5-2012 have misconstrued the facts and misapplied the law.

4. The learned law officer has opposed the petition and submitted that the police authorities were in possession of sufficient material to proceed against the accused persons namely Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob. A mere glance at case Diary No.3 dated 18-5-2012 would show that the police authorities had received credible information that the accused persons were connected with the commission of offence, prior to causing their arrest. It will not be possible to investigate the criminal case honestly and fairly without holding of an identification parade. Any order passed for the release of accused persons Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob or restraining the competent authority from holding an identification parade would stifle the prosecution case at the very initial stage.

5. Before proceeding any further it would be advantageous to reproduce section 54 of the Criminal Procedure Code 1898:--

Section 54 Cr.P.C. When police may arrest without warrant.---(1) Any police officer may, without an order from a Magistrate and without a warrant, arrest.--

firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Provincial Governments;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such things;

fifthly, any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape from lawful custody;

sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan, {xxxxxxxx};

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Pakistan which, if committed in Pakistan, would have been punishable as an offence, and for which he is, under any law relating to extradition {xxxxxxxx} or otherwise, liable to be apprehended or detained in custody in Pakistan.

eighthly, any released convict committing a breach of any rule made under section 565, subsection (3); and

ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be

made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

It is trite that section 54 of Criminal Procedure Code 1898 was not enacted to cater for the whims of a police officer. No one can be arrested under section 54 of Criminal Procedure Code 1898 unless the police authorities have received credible information or have reasonable suspicion qua the person sought to be arrested as has been held in *Syed Mohsan Ali Shah v. S.H.O. Police Station Garh Maharaja Tehsil Shorkot District Jhang* 1995 MLD 771. The words reasonable suspicion does not mean that a police officer can proceed on mere conjecture and surmises. The object of section 54 of Criminal Procedure Code 1898 is to give wide powers to police officers to arrest any person involved in the commission of a cognizable offence if the officer has reasonable basis to suspect his involvement in a cognizable offence as has been held in *Mazharuddin v. The State* 1998 PCr.LJ 1035. In the instant case four accused persons namely Shezad Azam, Hasan Nasir, Shahid Mehboob and Zahid Mehboob were apprehended after the police authorities had received certain information to the effect that the accused persons had abducted Muhammad Asif Khan A.S.I and pelted stones at the police officials, as would be evident from a bare reading of case Diary No.3 dated 18-5-2012. Needless to say that the contents of the case diary referred to above are not to be dilated upon at length lest it may prejudice the case of the accused. Holding of an identification parade would be a part of the process of investigation and the same cannot be stopped at this stage. No directions can be given to the police officials as to how and in what manner investigation in a criminal case is to take place. The High Court while seized of a petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 cannot assume the role of an investigator, as the authority to register and investigate a criminal case vests in the police and not in a court as has been held by the august Supreme Court of Pakistan in "*Brig. (Retd.) Imtiaz*

Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others " (1994 SCMR 2142).

6. For what has been stated above, this petition being without any merit stands dismissed.

NHQ/W-10/L Petition dismissed.

**2013 P Cr. L J 999**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**GHULAM RASUL---Petitioner**

**Versus**

**ADDITIONAL SESSIONS JUDGE, GUJRANWALA and 4 others---**

**Respondents**

Writ Petition No. 1988 of 2013, decided on 29th January, 2013.

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 22-A & 22-B---Civil Procedure Code (V of 1908), O.XXXIX, Rr.1 & 2---Contempt of Court Ordinance (V of 2003), S. 12---Constitution of Pakistan, Art. 199---Constitutional petition---Petition under Ss. 22-A and 22-B, Cr.P.C. filed before Justice of Peace on basis of violation of a stay order in a civil suit---Maintainability---Civil suit with regard to disputed property was pending adjudication before the civil court, wherein stay was granted in favour of plaintiff (petitioner)---Plaintiff filed a contempt petition against the defendants in the civil suit for violation of stay order---Subsequently plaintiff also filed a petition under Ss. 22-A & 22-B, Cr.P.C. before Justice of Peace, who called a report from the police and dismissed the petition as being baseless on the ground that plaintiff attempted to lodge a criminal case against the defendants, when he had also filed a

contempt petition---Validity---Version of plaintiff had not been affirmed by the police official in his report---Justice of Peace was right in not issuing direction for registration of case by holding that plaintiff had already filed a contempt petition for violation of stay order which would entail penal consequences---Allegations levelled against accused persons by the plaintiff entailed a factual inquiry, which could not be gone into by the High Court in its constitutional jurisdiction under Art.199 of the Constitution---Constitutional petition was dismissed accordingly.

**(b) Criminal Procedure Code (V of 1898)---**

---Ss. 22-A & 22-B---Power of Justice of Peace to issue directions for registration of F.I.R.---Scope---Ex-Officio Justice of Peace while seized of a petition under Ss. 22-A & 22-B, Cr.P.C. was not to act mechanically by issuing a direction for registration of F.I.R. in each and every case, which had to be decided on its own peculiar facts.

Mian Abdul Waheed v. Additional Sessions Judge, Lahore and 7 others  
2011 PCr.LJ 438 rel.

**(c) Constitution of Pakistan---**

---Art. 199---Constitutional jurisdiction of High Court---Scope---Allegations levelled in a constitutional petition filed before High Court entailing factual inquiry---Effect---Such allegations could not be gone into by the High Court while exercising its constitutional jurisdiction under Art. 199 of the Constitution.

Col. Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276 rel.  
Ch. Qamar Riaz Hussain Basra for Petitioner.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Ghulam Rasul seeks setting aside of the impugned order dated 3-1-2013 passed by respondent No.1 while hearing the case as Ex-Officio Justice of Peace.

2. The petitioner filed a petition under sections 22-A and 22-B Cr.P.C. before respondent No.1 dated 8-12-2012 stating therein that a criminal case was to be registered against respondents Nos.4 and 5 (herein) as they had committed a cognizable offence. Respondent No.1 after calling for a report from the concerned police official dated 17-12-2012 dismissed the petition filed by the petitioner on 3-1-2013 by holding as follows:--

"Bare perusal of contents of the petition reveals that petitioner by filing instant petition attempted to lodge a criminal case against the respondent by using this forum whereas he has also filed contempt petition for violating injunctive order. The petition is baseless, hence the same is dismissed."

3. A civil suit with regard to the property referred to by the learned counsel for the petitioner is pending adjudication between the parties. The petitioner has filed a contempt petition against respondents Nos.4 and 5 for violation of a stay order issued by the Civil Court. After hearing the arguments advanced by the learned counsel for the petitioner and going through the impugned order it is clear that the version of the petitioner has not been affirmed by the concerned police official in his report dated 17-12-2012. Respondent No.1 did not fall in error by holding that no direction for registration of a criminal case against respondents Nos.4 and 5 could be issued as the petitioner has already filed a contempt petition for violation of a stay order which would entail penal consequences before a



civil court qua his grievance. It is trite that an Ex-Officio Justice of Peace while seized of a petition under section 22-A/22-B, Cr.P.C. is not to act mechanically by issuing a direction for registration of a criminal case in each and every case, which had to be decided on its own peculiar facts as has been held by this court in Mian ABDUL WAHEED v. ADDITIONAL SESSIONS JUDGE LAHORE and 7 others 2011 PCr.LJ 438. In any case the allegations levelled against the accused persons by the petitioner cannot be gone into by this court while exercising its extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, as the same would entail a factual inquiry. A landmark judgment delivered by the august Supreme Court of Pakistan Col. Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276 may be read with considerable advantage.

4. The upshot of the above discussion is that this petition being without any merit is dismissed in limine.

MWA/G-13/L Petition dismissed.

**P L D 2013 Lahore 538**

**Before Muhammad Yawar Ali, J**

**IQRA JAVED alias SABA---Petitioner**

**Versus**

**STATION HOUSE OFFICER and others---Respondents**

Writ Petition No.1610-Q of 2013, decided on 11th February, 2013.

**(a) Penal Code (XLV of 1860)---**

----S. 365-B---Criminal Procedure Code (V of 1898), Ss.154 & 561-A---  
Constitution of Pakistan, Art. 199---Kidnapping, abducting or inducing  
woman to compel for marriage etc.---Constitutional petition---Quashing of

F.I.R.---According to F.I.R. accused allegedly kidnapped the alleged abductee---Alleged abductee stated in court that she was never abducted by anyone and married the accused with her own free will and consent without any duress and coercion---Taking any action in pursuance of F.I.R., in such circumstances, would be an abuse of the process of law---Constitutional petition was allowed, and impugned F.I.R. for offence under S.365-B, P.P.C was quashed.

**(b) Islamic Law---**

---Marriage---Nikahnama---Validity---Law did not permit others to challenge the validity of the Nikahnama, when its contents were admitted by the husband and the wife.

Zarjuma alias Jamna Bibi v. S.H.O. P.S. Saddar District Bhakkar and 4 others PLD 2009 Lah. 546 rel.

**(c) Criminal Procedure Code (V of 1898)---**

---Ss. 154, 173 & 561-A---Constitution of Pakistan, Art. 199---Constitutional petition---Quashing of F.I.R. when report under S.173, Cr.P.C has already been submitted---Scope---Where the High Court was of the opinion that an F.I.R. had been registered against innocent citizens on account of malice and there was no chance of their conviction, the same could be quashed notwithstanding the fact that a report under S.173, Cr.P.C had been submitted before the Trial Court.

The State v.Asif Ali Zardari and another 1994 SCMR 798 and Miraj Khan v. Gul Ahmed and 3 others 2000 SCMR 122 rel.

Muhammad Ashfaq Mughal for Petitioner.

Mrs. Samia Khalid, A.A.G. with Nasir S.I.

Complainant/Respondent No.3 in person.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A, Cr.P.C., the petitioner Iqra Javed alias Saba seeks quashing of F.I.R. No.213/2012 dated 20-3-2012 for offence under section 365-B, P.P.C. registered at Police Station Aroop, District Gujranwala.

2. According to the F.I.R., Iqra Javed alias Saba, sister of the complainant was abducted by the accused persons on 18-2-2012.

3. The learned counsel for the petitioner submits that the impugned F.I.R. has been lodged with mala fide intention and ulterior motives; the petitioner was never abducted by any one rather she married the accused Asim Ali, respondent No. 4 with her own free-will and consent on 9-3-2012 as is evident from a bare reading of a copy of the Nikah Nama which has been appended with this petition.

4. The alleged abductee, Iqra Javed alias Saba, the petitioner herein, who is present in the court has stated in clear and unequivocal terms that she was never abducted by any one and that she married the accused, respondent No.4, Asim Ali, with her own free will and consent.

5. The learned Law Officer and the complainant who is present in person have opposed this petition by submitting that respondent No.4, Asim Ali has been named in the F.I.R. and a specific role has been attributed to him. The accused persons have committed a cognizable offence, hence they are to be tried for the offence they have committed. There is no mala fide on the part of the complainant to have lodged a false and frivolous criminal case against the accused persons. As a report under section 173, Cr.P.C.

has been submitted before the learned trial court, this petition is liable to be dismissed.

6. Since the alleged abductee Iqra Javed alias Saba who is a star witness has stated before this court that she was never abducted by any one and that she married Asim Ali, respondent No.4 with her own free will and consent on 9-3-2012 without any duress and coercion, any action taken in pursuance of the impugned F.I.R. would be an abuse of process of law. This Court in Zarjuma alias Janina Bibi v. S.H.O., Police Station Saddar District Bhakkar and 4 others PLD 2009 Lahore 546 has held that law does not permit others to challenge the validity of a Nikah Nama when its contents are admitted by the husband and the wife and they have so stated before this court in clear and unequivocal terms. Where this Court is of the opinion that an F.I.R. has been registered against innocent citizens on account of malice and there is no chance of their conviction the same can be quashed notwithstanding the fact that a report under section 173, Cr.P.C. has been submitted before the trial court as has been held by the august Supreme Court of Pakistan in The State v. Asif Ali Zardari and another (1994 SCMR 798) and Miraj Khan v. Gul Ahmed and 3 others (2000 SCMR 122).

7. The upshot of the above discussion is that this petition is allowed and the impugned F.I.R. No.213 of 2012 dated 20-3-2012 for offence under section 365-B, P.P.C. registered at Police Station Aroop District Gujranwala stands quashed.

MWA/I-16/L Petition dismissed.

**2013 Y L R 1198**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MOIZ ALY MANJI---Petitioner**

**Versus**

**The STATE and others---Respondents**

Criminal Miscellaneous No.14877-B of 2012, decided on 1st March, 2013.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 498---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Ad interim pre-arrest bail, confirmation of---Cheques referred to in the F.I.R. had not been issued in favour of complainant as the name of complainant did not figure anywhere---Question as to whether cheques referred to in the F.I.R. were issued by the accused with dishonest intention in order to discharge an existing financial obligation, would be determined by the Trial Court during trial---Accused was charged with S. 489-F, P.P.C, which carried maximum punishment of three years imprisonment and thus it did not fall within the prohibitory clause of S. 497(1), Cr.P.C.---Accused had also alleged that F.I.R. was lodged by complainant with mala fide intention and ulterior motives---Record did not show that accused was a previously convicted offender---Ad interim pre-arrest bail already allowed to accused was confirmed in circumstances.

**(b) Criminal Procedure Code (V of 1898)---**

----S. 497(1)---Offences not punishable with death, imprisonment for life or imprisonment for ten years---Bail---Scope---Grant of bail in case of such offences was a rule and refusal thereof an exception.

Syed Ijaz Ali Sabzwari for Petitioner.

Saeed Ahmad Sheikh, A.P.-G. and Taimoor Ali, Inspector for the State.

Hasan Safdar Khan for the Complainant.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 498, Cr.P.C, the petitioner Moiz Aly Manji seeks pre-arrest bail in F.I.R. No.383 of 2012, dated 1-8-2012, for offence under section 489-F, P.P.C. registered at Police Station Shadman, District Lahore.

2. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely roped in this case; the instant F.I.R. has been lodged with a delay; the cheques as referred to in the F.I.R. were never issued by the petitioner; the petitioner has been charged with an offence which does not fall within the prohibitory clause of section 497, Cr.P.C; the petitioner is a previous non-convict no more required for further investigation of the case.

3. The learned Additional Prosecutor-General as well as the learned counsel for the complainant have opposed the instant petition by submitting that the petitioner is named in the F.I.R. and a specific role has been attributed to him; the matter is still being investigated by the police authorities; the cheques as referred to in the F.I.R. were in fact issued by the petitioner in favour of the complainant which were dis-honoured when presented for encashment; there is no mala fide on the part of the complainant to have lodged a false and frivolous criminal case against the petitioner; hence the petitioner is not entitled to the extraordinary concession of pre-arrest bail.

4. After hearing the arguments advanced by the learned counsel for the parties and perusing the record it is straightway noticed the cheques as

referred to in the F.I.R. have not been issued in favour of the complainant as the name of the complainant does not figure anywhere. Whether or not the cheques as referred to in the F.I.R. were issued by the petitioner with dishonest intention in order to discharge an existing financial obligation would be determined by the trial Court during trial. The petitioner has been charged with an offence which carries a maximum punishment of three years imprisonment and does not fall within the prohibitory clause of section 497, Cr.P.C, hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception. It has strongly been asserted by the learned counsel for the petitioner that the F.I.R. has been lodged by the complainant against the petitioner with mala fide intention and ulterior motives. There is nothing on record to show that the petitioner is a previous convicted offender.

5. For what has been stated above, this petition is accepted and ad interim pre-arrest bail earlier allowed to the petitioner vide order dated 12-10-2012 is hereby confirmed subject to his furnishing bail bonds in the sum of Rs.50,000 (rupees fifty thousands only) with one surety in the like amount to the satisfaction of the learned trial Court.

MWA/M-50/L Bail confirmed.

**PLJ 2013 Cr.C. (Lahore) 34**  
**[Multan Bench Multan]**  
**Present: Muhammad Yawar Ali, J.**  
**SHAHID HUSSAIN--Petitioner**  
**Versus**  
**STATE and another--Respondents**

CrI. Misc. No. 3322-B of 2011, decided on 28.9.2011.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 337-F(i), 337-A(i), & 394--Bail, grant of--Petitioner suffered five injuries at the hands of the complainant on the day of occurrence has neither been negated by the learned D.P.G. nor by complainant--None of the injuries suffered by the complainant are serious in nature and have been classified as Sections 337-A(i) and 337-F(i), PPC--Accused is a previous non-convict and according to the D.P.G. no criminal case stand registered against him. [P. 35] A

Mr. Nadeem Ahmad Tarar, Advocate for Petitioner.

Ch. Muhammad Akbar, D.P.G. for State.

Mr. Jameel Hussain Nutkani, Advocate for Complainant.

Date of hearing: 28.9.2011.

**Order**

Through this petition filed under Section 497, Cr.P.C., the petitioner seeks post arrest bail in case FIR No. 198/2011 dated 13.06.2011 for offences under Section 337-F(i), 337-A(i), 394, PPC registered at Police Station Chotti District D.G.Khan.

2. According to the FIR on 13.06.2011 at about 9:30 p.m. the petitioner alongwith other co-accused raised a "Lalkara" and threatened the complainant either to give him back his money or face dire consequences. Subsequently, the petitioner injured the complainant with the "Butt" of his



pistol. The petitioner was caught red handed at the spot by the complainant along with a .30 bore pistol.

3. The learned counsel for the petitioner submits that a false and fabricated FIR has been registered against the petitioner on account of previous enmity. It was a case of free fight and the petitioner sustained five injuries at the hands of the complainant. The petitioner was medically examined on 13.6.2011 and the injuries suffered by the petitioner were declared to be injuries under Section 337-A(i), 337-F(i), PPC. According to the prosecution case, no serious injury was suffered by the complainant. All the injuries suffered by the complainant have been classified as 337-F(i), 337-A(i), PPC. It was a case of sudden fight. The petitioner who is a previous non-convict has been falsely implicated with the commission of offence.

4. The learned Deputy Prosecutor General as well as the learned counsel for Respondent No. 2 have opposed the petition and submitted that the petitioner has been named in the FIR and an overt act has been attributed to him. The petitioner has been charged with an offence under Section 394, PPC which falls within the Prohibitory Clause of Section 497, Cr.P.C. The petitioner has been found to be guilty during the investigation which has been conducted. There is no malafide on the part of the complainant to have lodged a false and frivolous criminal case against the petitioner.

5. I have heard the arguments advanced by the learned counsel for the parties and perused the available record.

6. An assertion made by the learned counsel for the petitioner that the petitioner suffered five injuries at the hands of the complainant on the day of occurrence has neither been negated by the learned Deputy Prosecutor General nor by the learned counsel for the complainant. None of the injuries suffered by the complainant are serious in nature and have been classified as Sections 337-A(i) and 337-F(i), PPC. The petitioner is a previous non-convict and according to the learned Deputy Prosecutor General no criminal case stand registered against him.

7. In this view of the matter, this petition is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (one lac) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail allowed.

**PLJ 2013 Cr.C. (Lahore) 113**

**[Multan Bench Multan]**

**Present: Muhammad Yawar Ali, J.**

**MUNIR AHMAD--Petitioner**

**versus**

**STATE and another—Respondents**

CrI. Misc. No. 1882-B of 2011, decided on 15.6.2011.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497(2)--Pakistan Penal Code, (XLV of 1860), Ss. 394 & 411--Bail, grant of--Further inquiry--Petitioner has not been nominated in FIR--No salient features of the accused persons with regard to their build, height or complexion have been given in FIR--No identification parade was held to connect the petitioner with the commission of offence--This makes it a case of further inquiry--Bail allowed. [P. 114] A

Syed Jaffer Tayyar Bukhari, Advocate for Petitioner.

Ch. Muhammad Akbar, D.P.G. for State.

Date of hearing: 15.6.2011.

**Order**

Through this petition filed under Section 497, Cr.P.C. the petitioner seeks post arrest bail in case FIR No. 507 of 2010 dated 26.10.2010 for offences under Section 394/411, PPC registered at Police Station Mitroo District Vehari.

According to the FIR the complainant was traveling along with his brother in law and wife when he was way laid by two unknown persons who deprived him of his Mobile Phone and Rs. 7000/- in cash. One of the accused person fired at and injured Nazeer Ahmed who was accompanying the complainant. Similarly, the wife of the complainant also sustained an injury on her left foot.

The learned counsel for the petitioner submits that the petitioner has not been nominated in the FIR. No description of the accused persons have been given in the FIR. No identification parade was held to connect the petitioner with the commission of offence.

The learned Deputy Prosecutor General while opposing the petition submits that the petitioner has been charged with an offence that falls within the prohibitory clause of Section 497, Cr.P.C. That a pistol .30 bore, Mobile Phone and Rs. 3000/- cash stated to have been snatched from the complainant have been recovered from the petitioner. The petitioner has been found to be guilty during the investigation which has been conducted.

Respondent No. 2/complainant has not entered appearance in spite of being informed by Naveed S.I. about the fixation of the case.

A bare reading of the FIR would show that the petitioner has not been nominated. No salient features of the accused persons with regard to their build, height or complexion have been given in the FIR. No identification parade was held to connect the petitioner with the commission of offence. This makes it a case of further inquiry.

The upshot of the above discussion is that this petition is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail allowed.

**PLJ 2013 Cr.C. (Lahore) 259**  
**Present: Muhammad Yawar Ali, J.**  
**SHAHID MASEEH and another--Petitioners**  
**Versus**  
**STATE and another—Respondents**

CrI. Misc. No. 17518-B of 2012, decided on 12.2.2013.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 3370A(ii), 337-L(ii), 148 & 149--Pre-arrest bail--Confirmed--Principle of consistency--No specific injury was attributed--FIR was lodged against petitioners by complainant with malafide intention and ulterior motives--Co-accused had earlier been allowed bail--On principle of consistency and parity petitioners would be entitled to bails--Petitioners were previous non-convict--Petition accepted--Ad-interim pre-arrest bail earlier granted was confirmed. [Pp. 260 & 261]

A

2010 YLR 2108 and 2008 SCMR 173 ref.  
Haji Khalid Rahman, Advocate with petitioners.

Mr. Saeed Sheikh, APG for State.  
Nemo for Complainant.

Date of hearing: 12.2.2013.

**Order**

Through this petition filed under Section 498, Cr.P.C, the petitioners Shahid Maseeh and Yasir seek pre-arrest bail in FIR No. 1030/2012, dated 12.09.2012, for offence under Sections 337-A(ii), 337-L(ii), 148, 149, PPC registered at Police Station Ghulam Muhammadabad, District Faisalabad.

2. The learned counsel for the petitioners submits that the petitioners are innocent and have been falsely roped in this case. The instant FIR has been lodged by the complainant against the petitioners with mala fide intention and ulterior motives. The petitioners have been charged with the offences which do not fall within the prohibitory clause of Section 497, Cr.P.C. The allegation levelled against the petitioners is of a general nature

as no specific injury has been attributed to them. The case of the petitioners is at par with that of two co-accused Zahid alias Mithu and Soneel alias Sunny who have earlier been allowed bail by the learned Additional Sessions Judge, Faisalabad vide order dated 06.11.2012.

3. No one has entered appearance on behalf of the complainant although the name of the learned counsel for the complainant duly reflects in the Cause List.

4. The learned Additional Prosecutor General has opposed this petition by submitting that the petitioners are named in the FIR and a specific role has been attributed to them. The petitioners have been found to be guilty during the investigation which has taken place. There is no malafide on the part of the complainant to have lodged a false case against the petitioners.

5. After hearing the learned counsel for the petitioner, the learned Additional Prosecutor General and perusing the record it is clear that no specific injury has been attributed to the petitioners. According to the FIR only a general role has been assigned to the petitioners. The petitioners have been charged with offences which do not fall within the prohibitory clause of Section 497, Cr.P.C. It has strongly been asserted by the learned counsel for the petitioners that the FIR has been lodged against the petitioners by the complainant with malafide intention and ulterior motives. An injury stated to have been caused on the head of the complainant classified as 337-A(ii), PPC has been attributed to a co-accused Irfan. The case of the petitioners is at par with that of co-accused Zahid alias Mithu and Soneel alias Sunny who have earlier been allowed bail by the learned Additional Sessions Judge, Faisalabad vide order dated 06.11.2012, hence on the principle of consistency and parity, the petitioners would also be entitled to bail as has been held by this Court in Bhutta and another Vs. The State and another (2010 YLR 2108) and by the august Supreme Court of Pakistan in Muhammad Daud & another Versus The State & another (2008 SCMR 173). An assertion made by the

learned counsel for the petitioners that the petitioners are previous non-convict has not been negated by the learned Additional Prosecutor General. 6. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier granted to the petitioners vide order dated 04.12.2012 is hereby confirmed subject to their furnishing bail bonds in the sum of Rs.50,000/- (rupees fifty thousands) each with one surety each in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail confirmed.

**PLJ 2013 Cr.C. (Lahore) 296**

**Present: Muhammad Yawar Ali, J.**

**MUHAMMAD IMTIAZ alias Mazhari--Petitioner**

**versus**

**STATE and another—Respondents**

CrI. M. No. 16420-B of 2012, decided on 21.11.2012.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 337-F(iii), 337-F(v), 337-A(i), 337L(ii), 148 & 149--Pre-arrest bail--Confirmed--Principle of consistency--An inordinate delay for lodging FIR--No plausible explanation--No specific injury was attributed--There was nothing on the record to show that the petitioner caused any grievous or life threatening injury to any one--The petitioner had been charged with an offence which does not fall within the prohibitory clause of Section 497, Cr.P.C, hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception--Case of the petitioner was at par with that of co-accused who had earlier been allowed bail by High Court--On the principle of consistency and parity, the petitioner would also be entitled to the concession of bail--Bail allowed.

[P. 298] A

2008 SCMR 173, ref.

Mian Shahid Ali Shakir, Advocate with Petitioner.

Mr. Nissar Ahmad Gondal, A.P.G. for State.

Nemo for Complainant.

Date of hearing: 21.11.2012.

**Order**

Through this petition filed under Section 498, Cr.P.C, the petitioner, Muhammad Imtiaz alias Mazhari seeks pre-arrest bail in case FIR No. 521/2012 dated 19.10.2012 for offences under Section 337-F(iii), 337-F(v), 337-A(i), 337-L(ii), 148, 149, PPC registered at Police Station Rodala Road, District Faisalabad.

2. According to the FIR on 10.10.2012 at 10:00 p.m. the complainant accompanied with Mohsan Ali, Hanif and Shahid was on his way home when they were attacked by the petitioner and other co-accused. The petitioner, who was stated to be armed with a shot gun caused injuries with the "Butt" of the weapon which he was carrying.

3. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely roped in this case. The petitioner has not been ascribed any specific injury in the FIR. No grievous or life threatening injury has been attributed to the petitioner. The FIR has been lodged with an inordinate delay. The petitioner is a previous non-convict no more required for further investigation of the case. The FIR has been lodged against the petitioner with malafide intention and ulterior motives.

4. No one is present on behalf of the complainant in spite of being informed about the fixation of the case by Jaffar Ali S.I.

5. The learned Additional Prosecutor General has opposed the petition by submitting that the petitioner has been named in the FIR and a specific role has been attributed to him. The petitioner has been found to be guilty during the investigation which has been conducted. However, in all fairness, the learned Additional Prosecutor General has submitted that neither the complainant nor his injured brother Mohsin Ali have joined the

investigation inspiteof being called upon time and again by the Investigating Officer of the case.

6. Arguments have been heard and the record perused.

7. It is clear that the instant FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place on 10.10.2012 whereas the instant FIR was lodged on 19.10.2012. No specific injury has been attributed to the petitioner. There is nothing on the record to show that the petitioner caused any grievous or life threatening injury to any one. The petitioner has been charged with an offence which does not fall within the Prohibitory Clause of Section 497, Cr.P.C, hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception. It has strongly been asserted by the learned counsel for the petitioner that the FIR has been lodged against him by the complainant with malafide intention and ulterior motives. The case of the petitioner is at par with that of co-accused Qaisar Nadeem, who has earlier been allowed bail by this Court while disposing of CrI. Misc. No. 16491-B-2012, hence, on the principle of consistency and parity, the petitioner would also be entitled to the concession of bail as has been held by the august Supreme Court of Pakistan in Muhammad Daud & another versus the State & another (2008 SCMR 173).

8. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier allowed to the petitioner vide order dated 14.11.2012 is hereby confirm subject to his furnishing bail bonds in the sum of Rs.50,000/- (rupees fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail allowed.



**PLJ 2013 Cr.C. (Lahore) 359**  
**[Multan Bench Multan]**  
**Present: Muhammad Yawar Ali, J.**  
**ABDULLAH--Petitioner**  
**versus**  
**STATE and another—Respondents**

CrI. Misc. No. 5314-B of 2012, decided on 18.12.2012.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497(2)--Pakistan Penal Code, (XLV of 1860), Ss. 302 & 393--Bail, grant of--Further inquiry--Petitioner had been implicated with the commission of offence on the basis of supplementary statement recorded by the complainant who was aware of the identity of the accused persons-- This made the case of the prosecution one of two versions--While getting the FIR recorded the complainant never stated that he was aware of the identity of the accused persons but while getting the supplementary statement recorded on the very next day, the complainant stated in clear and unequivocal terms that he was aware of the identity of the accused persons, which would bring the case of the petitioner within the ambit of further inquiry--A perusal of the supplementary statement recorded by the complainant clearly showed that no source of information regarding, the petitioner's involvement in the alleged occurrence had been disclosed or divulged therein--Bail granted. [P. 361] A

2011 SCMR 1673, 2005 & 2005 YLR 1588, ref.

Mr. Muhammad Usman Sharif Khosa, Advocate for Petitioner.

Mr. Muhammad Akbar Ch., DPG for State.

Sardar Zafar Ahmed Lund, Advocate for Complainant.

Date of hearing: 18.12.2012.

**Order**

Through this petition, filed under Section 497, Cr.P.C the petitioner Abdullah seeks grant of post arrest bail in case FIR No. 250/2012, dated

05.08.2012, for offence under Sections 302, 393, PPC, registered at Police Station Chotti District Dera Ghazi Khan.

2. According to the FIR, on 05.08.2012 at about 9:00 a.m. four unknown persons waylaid Mujahid Hussain son of the complainant in order to snatch his motorcycle. The deceased resisted whereupon one unknown person fired at and caused an injury on the left side of his head. The occurrence was witnessed by the complainant, Farooq Ahmad and Zawar Hussain. The complainant with the help of eye-witnesses Farooq Ahmad and Zawar Hussain called at emergency 1122 and shifted Mujahid Hussain to Trauma Centre Dera Ghazi Khan where Mujahid Hussain breathed his last and expired.

3. The learned counsel for the petitioner submits that the petitioner has not been nominated in the FIR. No salient features of the unknown persons have been given in the body of the FIR. No identification parade was ever held in order to establish the identity of the accused persons. The petitioner has been roped in this case on account of a supplementary statement recorded by the complainant on 06.08.2012, according to which a co-accused Akbar fired at and caused a fatal injury to the deceased. No source of information regarding the petitioner's involvement in the alleged occurrence was disclosed by the complainant or the eye-witnesses. The petitioner is previous non-convict no more required for further investigation of the case.

4. The learned Deputy Prosecutor General as well as the learned counsel for the complainant have opposed the instant petition by submitting that the petitioner has been implicated with the commission of offence on the basis of a supplementary statement recorded by the complainant on 06.08.2012 wherein it has been stated in clear terms that the petitioner has committed the offence and participated in the occurrence. Two eye-witnesses Farooq Ahmad and Zawar Hussain got their statements recorded under Section 161, Cr.P.C. on the very day of occurrence wherein they stated that they saw the petitioner alongwith other co-accused committing

the offence as narrated in the FIR. They gave chase in order to apprehend all the accused persons but in vain. The petitioner is a member of a notorious gang involved in motorcycle and motor-vehicle snatching. The petitioner who committed a heinous offence has been found to be guilty by the Investigating Officer. The petitioner has been charged with an offence which falls within the ambit of prohibitory clause of Section 497, Cr.P.C. The challan has been submitted before the trial Court on 30.10.2012, evidence of three prosecution witnesses has been recorded, hence there are no good grounds allowing bail to the petitioner.

5. After hearing the arguments which have been advanced by the learned counsel for the parties and going through the record it is clear that the petitioner has not been named in the FIR. The physical attributes or general characteristics of the accused persons have not been mentioned in the FIR. The petitioner has been implicated with the commission of offence on the basis of a supplementary statement recorded by the complainant wherein it has been stated that the complainant was aware of the identity of the accused persons. This makes the case of the prosecution one of two versions. While getting the FIR recorded the complainant never stated that he was aware of the identity of the accused persons but while getting the supplementary statement recorded on the very next day, the complainant stated in clear and unequivocal terms that he was aware of the identity of the accused persons, which would bring the case of the petitioner within the ambit of further inquiry. A perusal of the supplementary statement recorded by the complainant clearly shows that no source of information regarding, the petitioner's involvement in the alleged occurrence had been disclosed or divulged therein. It is an admitted position that no identification parade was ever conducted in this case. In such a situation the petitioner would be entitled to a grant of bail in terms of law laid down by the august Supreme Court of Pakistan in *Shahid Hussain alias Multani Vs. The State and others* (2011 SCMR 1673). The statements of eye-witnesses Farooq Ahmad and Zawar Hussain recorded under Section 161,

Cr.P.C., on the day of occurrence are also at variance with the contents of the FIR. According to the FIR, the complainant and the eye-witnesses Farooq Ahmad and Zawar Hussain called emergency 1122 immediately after the occurrence and shifted Mujahid Hussain to Trauma Center District Dera Ghazi Khan where he subsequently expired. While getting their statements recorded under Section 161, Cr.P.C the eye-witnesses Farooq Ahmad and Zawar Hussain stated that they gave chase and tried to apprehend all the accused persons but in vain. There is no mention of accompanying the complainant to the Trauma Centre at Dera Ghazi Khan. The deceased died on account of a single fire-arm injury which has not been attributed to the petitioner. Although the challan has been submitted before the trial Court and the evidence of three prosecution witnesses has been recorded, this factor by itself would not be sufficient to deny bail to the petitioner as has been held by this Court in Shafqat Abbas Vs. The State (2005 Y.L.R. 1588).

6. For what has been stated above, this petition is allowed and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (one lac only) with two sureties in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail granted

**PLJ 2013 Lahore 693**

**Present: Muhammad Yawar Ali, J.**

**Syed IQBAL HAIDER--Petitioner**

**versus**

**ASHFAQ AHMED BAJWA and another—Respondents**

W.P. No. 23804 of 2013, decided on 23.9.2013.

**Constitution of Pakistan, 1973--**

----Art. 199--Illegal Dispossession Act, 2005--S. 7--Constitutional Petition--

Accused was summoned to face trial after recording cursory statement of

prosecution witnesses--Pros and cons of case--Quality of evidence would be evaluated by trial Court during course of trial--Validity--An order to summon accused to face trial, even otherwise would not be amenable to interference in writ jurisdiction--Petitioner would at be liberty to plead his case and profess his innocence before trial Court--Petition was dismissed. [Pp. 694 & 695] A & B

PLD 2007 Lah. 231 & PLD 2010 SC 661, ref.  
Malik Akhtar Javaid, Advocate for Petitioner.

Date of hearing: 23.9.2013.

### **Order**

The facts of the case which needs to be stated for the disposal of this petition are that Respondent No. 1 filed a complaint under the Illegal Dispossession Act 2005 dated 18.04.2013 slating therein that on 28.03.2013 the petitioner (herein) along with other ten unknown persons forcibly entered in his property at 4:30 p.m and illegally dispossessed him. On 16.08.2013 the petitioner was summoned to face trial by the learned trial Court and also address arguments on an application under Section 7 of the illegal Dispossession Act pending adjudication.

2. The learned counsel for the petitioner submits that the impugned order dated 18.04.2013 whereby the statement of the complainant was recorded and a report was called for from the SHO concerned and the order dated 16.08.2013 whereby the petitioner was summoned to face trial and address arguments on an application under Section 7 of the Illegal Dispossession Act pending adjudication is liable to be set aside being illegal. The dispute between the parties is essentially of a civil nature. The petitioner has never committed any offence under the Illegal Dispossession Act, hence could not have been summoned to face trial by the trial Court. Miscarriage of justice of justice would be occasioned in case the order of the trial Court dated 18.04.2013 whereby the complaint filed by Respondent No. 1 was registered and the order dated 16.08.2013 whereby the petitioner was summoned to face trial and address arguments on an

application under Section 7 of the Illegal Dispossession Act, pending adjudication is not declared illegal and set aside by this Court.

3. After hearing the arguments which have been advanced by the learned counsel for the petitioner at the limine stage and going through the documents appended with this petition it is clear that the trial Court has summoned the petitioner to face trial after recording the cursory statement of the complainant and two witnesses namely Zaka Ullah and Zaki Ahmad who deposed in line with the contents of the complaint filed under the Illegal Dispossession Act. The matter was referred to the SHO concerned for investigation who has also reported that the petitioner Syed Iqbal Haider along with other accused illegally dispossessed the complainant from the disputed land. After holding that prima facie a case has been made out against the petitioner he has been summoned to face trial. It is trite that the pros and cons of the case and the quality of the evidence would be evaluated by the trial Court during the course of trial. It would not be fit and proper for this Court to evaluate the quality of the evidence and the material examined by the learned trial Court while summoning the accused to face trial while exercising its extra ordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. An order to summon the accused to face trial, even otherwise would not be amenable to interference in writ jurisdiction in terms of law laid down by the this Court in Zahoor Ahmad & 5 others Vs. The State & 3 others PLD 2007 Lahore 231 and subsequently endorsed by the august Supreme Court of Pakistan in Bashir Ahmad Vs. Additional Sessions Judge, Faisalabad and 4 others PLD 2010 Supreme Court 661. Needless to say that the petitioner would at be liberty to plead his case and profess his innocence before the trial Court.

4. For what has been stated above, this petition being without any merit stands dismissed in limine.

(R.A.) Petition dismissed.

**2014 M L D 1451**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**Mst. SOBIA---Petitioner**

**Versus**

**ADDITIONAL DISTRICT AND SESSIONS JUDGE, LAHORE and 2 others-  
--Respondents**

Writ Petition No.6617 of 2013, decided on 29th May, 2013.

**Criminal Procedure Code (V of 1898)---**

----Ss.22-A & 22-B---Constitution of Pakistan, Art. 199---Constitutional petition---Ex-officio Justice of Peace had directed the S.H.O. concerned to record the statement of complainant/applicant under S.154, Cr.P.C., and proceed in the matter in accordance with law---Petitioner had impugned said order of Justice of Peace---Version of complainant as contained in his application filed under Ss.22-A, 22-B, Cr.P.C. had been found to be false and incorrect by S.H.O.---Complainant who was a proclaimed offender in an other criminal case against him, had filed application before Justice of Peace with mala fide intention and ulterior motive to counter a criminal case registered against him on the complaint of brother of the petitioner--- Constitutional petition was allowed and Impugned order passed by Justice of Peace, in absence of the comments of S.H.O. concerned, was set aside, in circumstances.

Hammad Akbar Wallana for Petitioner.

M. Arif Raja, Addl. A.G. Hammad, Inspector and Arshad Ali, S.I. for Respondents Nos.1 and 2.

Syed Z.H. Jaffari for Respondent. 3.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---By invoking the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks setting aside of the impugned order dated 15-2-2013 passed by respondent No.1 while hearing the case as an Ex-Officio Justice of Peace.

2. On 11-2-2013 respondent No.3 filed an application under sections 22-A and 22-B, Cr.P.C. stating therein that the accused have committed a cognizable offence by abducting her daughter, so that the latter may be subjected to illicit intercourse. Respondent No.1 after holding that the requisite report and para wise comments have not been submitted by the concerned police official directed the S.H.O. concerned to record the statement of the applicant, Mst. Naziran Bibi under section 154, Cr.P.C. and subsequently proceed in the matter in accordance with law.

3. The learned counsel for the petitioner has impugned the order dated 15-2-2013 passed by respondent No.1 by submitting that the petitioner is innocent and has not committed any cognizable offence. The applicant/respondent No.3 filed an application under section 22-A and 22-B, Cr.P.C. for registration of a criminal case against the accused with mala fide intention and ulterior motives as a counterblast of F.I.R. No.78/2013, dated 5-2-2013 for offence under sections 381, 420, 109 P.P.C. registered at Police Station Defense, District Lahore on the complaint of one Ghulam Abbas, brother of the petitioner wherein respondent No.3 and her daughter the alleged abductee have been arrayed as an accused. Respondent No.3 and her daughter are guilty of having committed theft and being criminals they are using different names at different times. The impugned order cannot be sustained as the same has been passed without calling for and perusing the report of the S.H.O. concerned.



4. The learned Law Officer while relying on the report of the S.H.O. concerned has supported the petitioner by submitting that respondent No.3 neither filed any application nor appeared before the S.H.O. concerned prior to filing the petition before the learned Ex-Officio Justice of Peace under sections 22-A, 22-B, Cr.P.C. The learned Law Officer has gone on to submit that respondent No.3 after being declared a proclaimed offender in F.I.R. No.78/2013 dated 5-2-2013 for offence under sections 381, 420, 109 P.P.C. registered at Police Station Defense, District Lahore filed an application under sections 22-A, 22-B Cr.P.C. before the learned Ex-Officio Justice of Peace in order to counter the complaint lodged by Ghulam Abbas, brother of the petitioner herein. During the investigation the version of respondent No.3, who is a fugitive from law has been found to be false and incorrect.

5. The learned counsel for respondent No.3 while supporting the impugned order submits that the victim daughter of respondent No.3 has been recovered who has stated in clear terms that she was subjected to illicit intercourse by two accused persons and the petitioner took money so as to ensure that the offence is committed. One accused after committing illicit intercourse with the victim left her standing in front of the Women Police Station, Islamabad from where she was recovered and sent to the Daar-ul-Amaan, Islamabad. As the victim was detained and subjected to illicit intercourse against her wishes, a criminal case ought to be registered against the accused forthwith.

6. The version of respondent No.3 as contained in her application filed under sections 22-A, 22-B Cr.P.C. has been found to be false and incorrect by the S.H.O. concerned. The S.H.O. concerned while filing his report before this Court has negated the version of respondent No.3 by submitting that respondent No.3 has been declared as proclaimed offender in F.I.R. No.78/2013 dated 5-2-2013 for offence under sections 381, 420,

109, P.P.C. registered at Police Station Defense, District Lahore and that she filed the petition under sections 22- A, 22-B, Cr.P.C. before the learned Ex-Officio Justice of Peace with mala fide intention and ulterior motive just to counter the complaint of Chulain Abbas, brother of the petitioner herein. It is thus clear that respondent No.3 who is a proclaimed offender in F.I.R. No.78/2013 dated 5-2-2013 for offence under sections 381, 420, 109 P.P.C. registered at Police Station Defense, District Lahore filed the petition before the learned Ex-Officio Justice of Peace, Lahore with mala fide intention and ulterior motives to counter a criminal case registered against her on the complaint of Glaulam Abbas brother of the petitioner herein. In these circumstances this petition is allowed and the impugned order dated 15-2-2013 passed by the learned Ex-Officio Justice of Peace, Lahore in the absence of the comments of the S.H.O. concerned is hereby set aside.

HBT/S-88/L Petition allowed.

**2014 P Cr. L J 487**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**ZULFIQAR ALI---Petitioner**

**Versus**

**STATION HOUSE OFFICER, POLICE STATION MODEL TOWN,**

**GUJRANWALA and 2 others---Respondents**

Writ Petition No.9190-Q of 2013, decided on 3rd July, 2013.

**Penal Code (XLV of 1860)---**

---S. 406--- Constitution of Pakistan, Art. 199---Constitutional petition---  
Quashing of F.I.R.---Criminal breach of trust---Delay in registration of  
F.I.R.---Complainant had been supplying goods to accused in order to sell

the same for profit and alleged that accused being his agent had misappropriated his amount---Validity---Person could only be guilty of committing offence under S.406, P.P.C., if some property was given on trust and the said property was not returned to its original owner---F.I.R. showed that certain chemicals were periodically delivered by complainant to accused in order to do business, sell the same for profit and hand over due amount of money to him---Even if contents of F.I.R. were taken as gospel truth, accused could not be convicted for offence under S.406, P.P.C.---No one was to be prosecuted on the basis of vague and unspecified allegations---F.I.R. was lodged with an inordinate delay for which no plausible explanation was made---Offence was stated to have taken place in year, 2009, whereas F.I.R. was lodged with a long delay on 21-2-2013--- Trial Court after submission of challan would not be in a position to frame charge and proceed further against accused and continuation of any criminal proceedings on the basis of F.I.R. would be an abuse of process of law resultantly the F.I.R. was quashed---Petition was allowed in circumstances.

Shaukat Ali Sagar v. Station House Officer, Police Station Batala Colony, Faisalabad and 5 others 2006 PCr.LJ 1900 and Shahid Imran v. The State and others 2011 SCMR 1614 rel.

Ms. Bushra Qamar for Petitioner.

Muhammad Azeem Malik, Additional A.-G. with Muhammad Imtiaz, S.-I. for Respondents.

Pervaiz Abid Heral for Respondent No.3.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---With the consent of the parties, the case is being treated as "Pacca" case.

2. Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 the petitioner seeks quashing of the

impugned F.I.R. No.135/2013 dated 21-2-2013 for offence under section 406, P.P.C. registered at Police Station Model Town District Gujranwala.

3. According to the F.I.R. the petitioner was appointed an Agent by respondent No.3 in the year 2006 for the purposes of utilizing some portion of chemicals supplied to him by the complainant and selling the rest for profit. After 2009 the petitioner defaulted in making payment of Rs.20,00,000 to the complainant namely respondent No.3 and by so doing committed a cognizable offence.

4. The learned counsel for the petitioner submits that the F.I.R. has been lodged with an inordinate delay. A bare reading of the F.I.R. would show that the petitioner is not guilty of having committed an offence under section 406, P.P.C. The dispute between the petitioner and the complainant is essentially of a civil nature. The F.I.R. which has been lodged with mala fide intention and ulterior motives is liable to be quashed as there is no chance of the petitioner being convicted for an offence under section 406, P.P.C.

5. The learned law officer has not opposed the petition. After referring to the contents of the F.I.R. he has submitted that the petitioner cannot be convicted as the essential ingredients of section 405, P.P.C. are missing in this case.

6. The learned counsel for respondent No.3 (complainant herein) has vehemently opposed this petition by submitting that the petitioner has been named in the F.I.R. and a specific role has been attributed to him. The petitioner who was appointed an Agent by respondent No.3 committed criminal breach of trust by misappropriating a sum of Rs.20,00,000 which was due to the complainant. The guilt or innocence of the petitioner would be determined by the trial Court during the course of trial. Miscarriage of

justice would be occasioned in case the prosecution case is stifled at this stage by quashing of the F.I.R.

7. I have heard the arguments which have been advanced by the learned counsel for the parties and gone through the record with their able assistance. According to the F.I.R. some chemicals were supplied by respondent No.3 to the petitioner for the sole purpose that the petitioner would utilize some portion of it, sell the rest for profit and return to respondent No.3 the amount which was due to him. The definition of criminal breach of trust is given in section 405, P.P.C. which reads as follows:--

"Criminal breach of trust. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

A bare reading of the provision of law reproduced above shows that a person can only be guilty of committing an offence under section 406, P.P.C. if some property is given on trust and the same property is not returned to its original owner. In the instant case it is quite clear that as per the impugned F.I.R. certain chemicals were periodically delivered by respondent No.3 to the petitioner in order to do business, sell the same for profit and hand over the due amount of money to respondent No.3. It is thus clear even if the contents of the F.I.R. are taken as the gospel truth

the petitioner cannot be convicted for an offence under section 406, P.P.C. An illuminating judgment of this court in Shaukat Ali Sagar v. Station House Officer, Police Station Batala Colony, Faisalabad and 5 others 2006 PCr.LJ 1900 and another judgment delivered by the august Supreme Court of Pakistan in Shahid Imran v. The State etc. 2011 SCMR 1614 can be read with considerable advantage. In the instant case the transaction as referred to in the F.I.R. is not one of entrustment of the property rather it is one of an investment that is profit to be earned on selling of chemicals provided by respondent No.3 and sharing of the profit by the parties concerned. Admittedly no time and date has been given in the body of the F.I.R. indicating as to when the offence was committed. In the F.I.R. it has merely been mentioned that the offence was committed somewhere in the year 2009. It is trite that no one is to be prosecuted on the basis of vague and unspecified allegations. The F.I.R. has also been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place in the year 2009 whereas the F.I.R. was lodged with a long delay on 21-2-2013. From the above discussion, it is quite clear that the trial Court after submission of challan would not be in a position to frame charge and proceed further against the accused/petitioner. The continuation of any criminal proceedings on the basis of the impugned F.I.R. would be an abuse of process of law.

8. For what has been stated above, this petition is accepted and the impugned F.I.R. No.135/2013 dated 21-2-2013 for offence under section 406, P.P.C. registered at Police Station Model Town District Gujranwala is hereby quashed.

MH/Z-22/L Petition allowed.

**2014 P Cr. L J 800**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**SHARAFAT alias BODA---Petitioner**

**Versus**

**The STATE and others---Respondents**

Criminal Appeal No.214-J of 2011 and C.M. No.2 of 2012, decided on 20th November, 2012.

**Criminal Procedure Code (V of 1898)---**

----S. 426---Penal Code (XLV of 1860), S.376(1)---Rape---Suspension of sentence---Release of accused on bail---Statutory delay in disposal of appeal---Accused was convicted for rape and sentenced to 17 years' imprisonment by the Trial Court---More than 2 years had gone by since accused filed an appeal against his conviction for rape, but the same had not been disposed of as yet---Delay in hearing of appeal was not occasioned by the accused---No likelihood existed of hearing of appeal in the near future---Accused was a juvenile when he was tried and convicted by the Trial Court---Nothing on record showed that accused was a previous convict or was a hardened, desperate or dangerous criminal or was an accused of an act of terrorism punishable with death or imprisonment for life---Sentence of accused was suspended in circumstances and he was released on bail.

Mian Tariq Hussain for Petitioner.

Nisar Ahmad Gondal, A.P.-G. and Najam S.-I. for the State.

Nemo for the Complainant.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---The petitioner Sharafat alias Boda was tried by the learned Additional Sessions Judge Hafizabad in case F.I.R. No.403/2009 dated 27-9-2009 for an offence under section 376(1), P.P.C. registered at Police Station Kassoke District Hafizabad who vide judgment dated 31-7-2010 convicted and sentenced the petitioner as follows:--

Under section 376(1), P.P.C.

17 years Rigorous Imprisonment with fine of Rs.1,00,000. In case of non-payment of fine to further undergo 6 months' Simple Imprisonment.

2. Benefit of section 382-B, Cr.P.C. was also extended in favour of the petitioner.

3. The learned counsel for the petitioner seeks suspension of sentence of the petitioner on statutory grounds and submits that the petitioner was arrested on 29-9-2009 and convicted by the trial Court on 31-7-2010. The petitioner who filed his appeal on 2-10-2010 before this court is behind the bars till today. The delay in disposal of the appeal has not been occasioned by the petitioner.

4. No one is present on behalf of the complainant in spite of being informed about the fixation of case by Najam S.I.

5. The learned Additional Prosecutor-General while opposing the petition submits that the petitioner has been convicted by the trial Court on the basis of a well-reasoned judgment. The petitioner committed a heinous offence, hence is not entitled to the concession of bail by way of suspension



of sentence. Miscarriage of justice would be caused in case the petitioner is allowed bail as he is a hardened, desperate and dangerous criminal.

6. In normal course of events the petitioner would be entitled to bail on the ground that more than two years have gone by and there is no likelihood of hearing of the appeal filed by the petitioner in the near future. There is nothing on the record to show that the petitioner is a previous convict or is a hardened, desperate or dangerous criminal or is an accused of an act of terrorism punishable with death or imprisonment for life. The criminal appeal was filed on 2-10-2010, more than two years have gone by but the same has not been disposed of till today. The delay in hearing of the appeal has not been caused by the petitioner and by virtue of an amendment incorporated in section 426, Cr.P.C. the petitioner has become entitled for suspension of sentence. The petitioner was juvenile when he was tried and convicted by the trial Court.

7. For what has been stated above, this petition is allowed, sentence of imprisonment of the petitioner is suspended and he is admitted to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000 (rupees two hundred thousand) with one surety in the like amount to the satisfaction of the Deputy Registrar (J) of this Court. The petitioner, shall appear before this court in person on each and every date of hearing till the final disposal of the main appeal.

MWA/S-24/L Sentence suspended.

**2014 P L C (C.S.) 386**  
**[Lahore High Court]**  
**Before Muhammad Yawar Ali, J**  
**MUHAMMAD RAUF PATWARI**  
**Versus**  
**DISTRICT COLLECTOR/DCO, TOBA TEK SINGH and 6 others**

Writ Petition No.26319 of 2012, decided on 19th October, 2012.

**(a) Punjab Employees Efficiency, Discipline and Accountability Act  
(XII of 2006)---**

----Ss. 5(b) & 9(d)---Constitution of Pakistan, Art.199---Constitutional petition--- Maintainability--- Initiation of inquiry by competent authority--- Directions to accused (civil servant) to file reply/defence---No final order passed---Writ not to be issued in such circumstances---Patwari (petitioner) was alleged to have deliberately made a wrong entry in the "Khasra Girdawari"---Competent authority (respondent) passed an order under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 for holding an inquiry, whereafter a revenue official was appointed as the inquiry officer to conduct inquiry against the Patwari, who was given seven days to submit his defence in writing---Contentions of Patwari were that he was being victimized by higher officials of the Revenue department and that miscarriage of justice would take place in case impugned order calling upon him to submit a written reply was not declared to be illegal--- Validity---No final order had been passed against the Patwari---After receiving a complaint, competent authority sent a notice to the Patwari indicating therein that an inquiry was being initiated against him and he was directed to file his reply---Without waiting for result of the inquiry, Patwari had filed the present constitutional petition---Constitutional petition would not be maintainable against initiation of an inquiry or

issuance of a notice directing the petitioner to file his reply---Only a reply had been sought from the Patwari and no final order had been passed--- Present constitutional petition was filed pre-maturely and was accordingly dismissed.

Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939 and Virasat Ullah v. Bashir Ahmad Settlement Commissioner (Industries) and another 1969 SCMR 154 rel.

**(b) Constitution of Pakistan---**

----Art. 199--- Constitutional petition--- Maintainability--- Civil service--- Initiation of an inquiry or issuance of a notice directing petitioner civil servant to file his reply---Constitutional petition would not be maintainable in such circumstances.

Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939 rel.

**(c) Constitution of Pakistan---**

----Art. 199--- Constitutional petition---Civil service---Constitutional petition against mere issuance of a notice---Maintainability--- No writ could be issued in such circumstances.

Virasat Ullah v. Bashir Ahmad Settlement Commissioner (Industries) and another 1969 SCMR 154 rel.

Shabbir Hussain Dhillon for Petitioner.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**--- The petitioner is working as a Patwari in the Revenue Department, Government of the Punjab. On receipt of a complaint against the petitioner, respondent No.2 being the competent authority under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 passed an order for holding of an inquiry. On 5-10-2012 in the order impugned herein General Assistant (Revenue) Toba Tek Singh was appointed as Inquiry Officer to conduct an inquiry against the petitioner. The petitioner was given seven days time to come forward with his defense in writing.

2 The learned counsel for the petitioner submits that the petitioner is being victimized by the higher officials of the Revenue Department for no fault of his own. Ashiq Ali, respondent No.7 being inimically disposed towards the petitioner filed a false and frivolous application stating therein that the petitioner had deliberately made a wrong entry in the "Khasra Girdawari". The application filed by respondent No.7 upon which inquiry proceedings have been initiated is tainted with mala fide. Miscarriage of justice would take place in case the impugned order dated 5-10-2012 calling upon the petitioner to submit his written reply is not declared to be illegal.

3. After hearing the arguments which have been advanced at the limine stage and going through the documents which have been appended with this petition it is clear that no final order has been passed against the petitioner. On receipt of a complaint, respondent No.2 being the competent authority under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 appointed General Assistant (Revenue), Toba Tek Singh as an Inquiry Officer and directed the petitioner to file his reply. Without waiting for the result of the inquiry, the petitioner has filed the instant petition. It is trite that a petition filed under Article 199 of the

Constitution of Islamic Republic of Pakistan, 1973 would not be maintainable against initiation of an inquiry or issuance of a notice directing the petitioner to file his reply as has been held by this Court in Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC (C.S.) 939. The august Supreme Court of Pakistan in Virasat Ullah v. Bashir Ahmad Settlement Commissioner (Industries) and another 1969 SCMR 154 has also held that no writ can be issued against mere issuance of a notice. In the instant case, a notice has been issued to the petitioner indicating therein an inquiry is being initiated against him wherein he has also been directed to file a reply. It is thus clear that only a reply has been sought from the petitioner and no final order has been passed.

4. In this view of the matter, this petition being pre-mature and without any merit stands dismissed in limine.

MWA/M-329/L Petition dismissed.

**2014 Y L R 2283**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUSHTAQ AHMAD---Petitioner**

**Versus**

**The STATE and another---Respondents**

Criminal Miscellaneous No.2004-B of 2013, decided on 11th June, 2013.

**Criminal Procedure Code (V of 1898)---**

----S. 497---Penal Code (XLV of 1860), Ss.395 & 412---Dacoity, dishonestly receiving property stolen in the commission of a dacoity---Bail, grant of---F.I.R., had been lodged with an inordinate delay of about 15 days for which

no plausible explanation was forthcoming---Co-accused with a similar role had earlier been allowed bail after a compromise had been effected between co-accused and the complainant---If the complainant had entered into a compromise with co-accused to whom a similar role had been attributed, then accused would also be entitled to the benefit of grant of bail--- Assertion made by the counsel for accused that accused was a previous non-convict, had not been negated by Deputy Prosecutor General---As challan had been submitted before the Trial Court, it could be inferred that accused was no more required for further investigation of the case--- Accused was admitted to bail, in circumstances.

Muhammad Ijaz v. The State 2008 YLR 2585 rel.

Malik Muhammad Siddique Kamboh for Petitioner.

Ch. Muhammad Akbar, D.P.G. and Nazim Ali S.I. for the State.

Nemo for the Complainant.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 497, Cr.P.C, the petitioner Mushtaq Ahmad seeks post arrest bail in F.I.R. No.663/2012 dated 9-10-2012 for offence under sections 395, 412 P.P.C. registered at Police Station Gulgasht, District Multan.

2. No one has entered appearance on behalf of the complainant in spite of being informed about the fixation of the case by Nazim Ali, S.I. present in Court.

3. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely roped in this case by they complainant with mala fide intention and ulterior motives. The F.I.R. has been lodged with an inordinate delay. A co-accused Muhammad Sajid has earlier been

allowed bail by the learned trial court on 16-2-2013. The petitioner is a previous non-convict no more required for further investigation of the case.

4. The learned Deputy Prosecutor General has vehemently opposed this petition submitting that the petitioner is named in the F.I.R. and has been found to be guilty during the investigation which has taken place. The petitioner has not only been named in the F.I.R. but has also been duly identified try the prosecution witness Azhar Abbas during the identification parade which was held on 1-11-2012. The petitioner is a member of a notorious criminal gang, hence he is not entitled to the concession of bail.

5. After hearing the arguments advanced by the learned counsel for the petitioner, the learned Deputy Prosecutor General and going through the record, it is clear that the F.I.R. has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place on 24-9-2013 whereas the F.I.R. was lodged with a considerable delay on 9-10-2013. A co-accused Muhammad Sajid with a similar role has earlier been allowed bail by the learned Magistrate Section 30, Multan on 16-2-2013 after a compromise had been effected between the co-accused Muhammad Sajid and the complainant. If the complainant enters into a compromise with a co-accused to whom a similar role has been attributed then the petitioner would also be entitled to the benefit of grant of bail in terms of law laid down by this Court in Muhammad, Ijaz v. The State 2008 YLR 2585. An assertion made by the learned counsel for the petitioner that the petitioner is a previous non convict has not been negated by the learned Deputy Prosecutor General. As challan has been submitted before the learned trial Court it can be inferred that the petitioner is no more required for further investigation of the case.

6. For what has been stated above, this petition is accepted and the petitioner is admitted to bail subject to his furnishing bail bonds in the

sum of Rs.2,00,000 (Rupees two hundred thousand) with two sureties in the like amount to the satisfaction of the learned trial Court.

HBT/M-227/L Bail granted.

**PLJ 2014 Cr.C. (Lahore) 180**

**[Multan Bench Multan]**

**Present: Muhammad Yawar Ali, J.**

**GHULAM SHABBIR alias SHBU--Petitioner**

**Versus**

**STATE and another—Respondents**

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 365-B, 511, 456, 337-H(2)--Pre-arrest bail--Confirmed--Petitioner who was armed with a rifle fired at the complainant but did not cause any injury to any one--Earlier the petitioner with her free will and consent--Alleged abductee filed a suit for dissolution of marriage which was decreed meaning thereby that at the time of occurrence the alleged abductee was legally wedded wife of the petitioner--As per the FIR the accused attempted to abduct the abductee but could not succeed in their nefarious designs--There was nothing on the record to establish that the petitioner has previous criminal antecedents--The FIR has been lodged with an inordinate delay for which no plausible explanation was forthcoming--Offence was stated to have taken place during the intervening night whereas the FIR was lodged with a long delay--It has strongly been asserted by the counsel for the petitioner that the FIR has been lodged by the complainant against the petitioner with mala fide intention and ulterior motives--Bail confirmed. [P. 181] A

Ch. Daoud Ahmad Wain, Advocate for Petitioner.

Ch. Muhammad Akbar, DPG for State.

Rana Shaukat Hayat Noon, Advocate for Complainant.

Date of hearing: 19.11.2013.



## **Order**

Through this petition filed under Section 498, Cr.P.C. the petitioner, Ghulam Shabbir alias Shbu seeks pre-arrest bail in FIR No. 485/2012 dated 17.9.2012 for offence under Sections 365-B, 511, 456, 337-H.2, PPC registered at Police Station City Jalalpur Pirwala District Multan.

2. After hearing the arguments which have been advanced and going through the record, it is clear that as per the prosecution case the petitioner who was armed with a rifle fired at the complainant but did not cause any injury to any one. Earlier the alleged abductee Mst. Hanifan Mai had married the petitioner with her free will and consent on 21.7.2012. The alleged abductee filed a suit for dissolution of marriage which was decreed on 15.10.2012 meaning thereby that at the time of occurrence the alleged abductee was legally wedded wife of the petitioner. As per the FIR the accused attempted to abduct Mst. Hanifan Mai but could not succeed in their nefarious designs. There is nothing on the record to establish that the petitioner has previous criminal antecedents. The FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place during the intervening night on 13/14.9.2012 whereas the FIR was lodged with a long delay on 17.9.2012. It has strongly been asserted by the learned counsel for the petitioner that the FIR has been lodged by the complainant against the petitioner with mala fide intention and ulterior motives.

3. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier allowed to the petitioner vide order dated 10.10.2013 stands confirmed subject to furnishing bail bonds in the sum of Rs. 1,00,000/- (rupees one hundred thousand) with two sureties in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail confirmed.

**PLJ 2014 Cr.C. (Lahore) 378**

**[Multan Bench Multan]**

**Present: Muhammad Yawar Ali, J.**

**MUHAMMAD MUSHTAQ--Petitioner**

**Versus**

**STATE, etc.—Respondents**

Crl. Misc. No. 3548-B of 2013, decided on 7.10.2013.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 489-F--Bail before arrest--Confirmed--FIR has been lodged with an inordinate delay. According to the FIR, the occurrence took place whereas the same was lodged with a delay--Petitioner has been charged with an offence which carries a maximum punishment of three years imprisonment and does not fall within the Prohibitory Clause of Section 497, Cr.P.C. hence in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception--Deputy Prosecutor General in all fairness has pointed out that as per the investigation which has taken place the cheque as referred to in the FIR' was issued by the petitioner in favour of the complainant as a measure of security and not in order to defray any existing financial obligation. It has strongly been asserted by the counsel for the petitioner that the FIR has been lodged against the petitioner by the complainant with mala fide intention and ulterior motives. An assertion made by the counsel for the petitioner that the petitioner is a previous non-convict has not been negated by the Deputy Prosecutor General. [P. 379] A

Mr. Nadeem Ahmad Tarar, Advocate with Petitioner.

Mr. Muhammad Abdul Wadood, D.P.G. for State.

Mr. Mehar Rashid Iqbal, Advocate for Complainant.

Date of hearing: 7.10.2013.

## **Order**

Through this petition filed under Section 498, Cr.P.C., the petitioner Muhammad Mushtaq seeks pre-arrest bail in FIR No. 218/2013 dated 17.06.1013 for offence under Section 489-F, PPC registered at Police Station City Vehari, District Vehari.

2. The learned counsel for the petitioner submits that the petitioner is innocent and has been falsely roped in this case by the complainant with mala fide intention and ulterior motives; the instant FIR has been lodged with a delay; the petitioner never issued a cheque in favour of the complainant as has been narrated in the FIR; the petitioner is a previous non-convict no more required for further investigation of the case.

3. The learned counsel for the complainant has opposed this petition by submitting that the petitioner has been named in the FIR and a specific role has been attributed to him the petitioner issued a cheque in the sum of Rs.7,00,000/- in favour of the complainant which was dishonoured when presented for encashment hence he is not entitled to the concession of pre-arrest bail.

4. The learned Deputy Prosecutor General does not oppose this petition as the petitioner has not been found to be guilty during the investigation which has been conducted. As per Case Diary No. 6 dated 23.07.2013 the petitioner issued the cheque as referred to in the FIR in favour of the complainant as a measure of guarantee and not to discharge an existing financial obligation.

5. After hearing the arguments advanced by the learned counsel for the parties and perusing the record it is clear that the instant FIR has been lodged with an inordinate delay. According to the FIR, the occurrence took place on 24.12.2012 whereas the same was lodged with a delay on 17.6.2013. The petitioner has been charged with an offence which carries a maximum punishment of three years imprisonment and does not fall within the Prohibitory Clause of Section 497, Cr.P.C. hence in cases not punishable with death, imprisonment for life or ten years imprisonment

grant of bail is a rule and refusal is an exception. The learned Deputy Prosecutor General in all fairness has pointed out that as per the investigation Case Diary No. 6 dated 23.7.2013 which has taken place the cheque as referred to in the FIR was issued by the petitioner in favour of the complainant as a measure of security and not in order to defray any existing financial obligation. It has strongly been asserted by the learned counsel for the petitioner that the FIR has been lodged against the petitioner by the complainant with mala fide intention and ulterior motives. An assertion made by the learned counsel for the petitioner that the petitioner is a previous non-convict has not been negated by the learned Deputy Prosecutor General.

6. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier allowed to the petitioner vide order dated 29.7.2013 is hereby confirmed subject to his furnishing bail bonds in the sum of Rs.50,000/- (rupees fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail confirmed.















**2015 P Cr. L J 150**

**[Lahore]**

**Before Muhammad Yawar Ali and Miss Aalia Neelum, JJ**

**Mst. SADIA BIBI---Petitioner**

**Versus**

**The STATE and another---Respondents**

Criminal Miscellaneous No.1 of 2013 in Criminal Appeal No. 873 of 2013, decided on 30th July, 2013.

**Criminal Procedure Code (V of 1898)---**

----S. 426--- Control of Narcotic Substances Act (XXV of 1997), S.9(c)--- Recovery of narcotics---Sentence, suspending of---Accused was found in possession of Charas weighing 4 kilogram which was wrapped in three packets and in a sack Garda Charas was also recovered---Accused was apprehended at the spot red handed and prosecution witnesses fully supported version of prosecution---Effect---Recovery of Charas at the spot was fully proved and Chemical Examiner Report was also positive---High Court did not find it appropriate to have deeper appreciation at such stage--Accused was convicted under S. 9(c) of Control of Narcotic Substances Act, 1997, after regular trial and Trial Court came to the conclusion that prosecution had proved its case beyond reasonable doubt---High Court declined to suspend the sentence awarded to accused by Trial Court---Petition was dismissed in circumstances.

The State through Deputy Director, Anti-Narcotics Force, Karachi v. Mobin Khan 2000 SCMR 299 rel.

Hammad Akbar Wallana for Petitioner

Ch. Muhammad Mustafa, Deputy Prosecutor-General for the State.

## **ORDER**

Through the instant petition filed in terms of section 426, Cr.P.C., Mst. Sadia Bibi petitioner seeks suspension of her sentence and admitting her to bail, pending disposal of her criminal appeal.

2. Having been booked in case F.I.R. No. 384 dated 11-4-2006, offence under section 9(c) of the Control of Narcotic Substances Act, 1997 registered at Police Station North Cantt, Lahore, the petitioner was tried by Malik Khalid Mehmood, Additional Sessions Judge, Lahore. The learned trial court seized with the matter in terms of judgment dated 26-6-2013 convicted the petitioner under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced her to undergo R.I. for five years and six months with direction to pay fine of Rs.25,000 and in case of default in payment thereof, to further undergo S.I. for five months and fifteen days. Benefit of section 382-B, Cr.P.C. was also extended in favour of the petitioner.

3. It has been contended by the learned counsel for the petitioner that the impugned judgment is against the law and facts as the petitioner has falsely been involved in this case with mala fide intention and ulterior motives; that there is no evidence against the petitioner to prove the prosecution case; that there are grave and glaring contradiction in the statements of recovery witnesses as well as of prosecution witnesses; that as per complaint, F.I.R., recovery memos. and the report of chemical examiner, the alleged recovered material has been shown as Garda charas but during the course of trial, different case property was presented before the learned trial Court which makes the prosecution case doubtful and as such the petitioner be released on bail by suspending the sentence of the petitioner.

4. On the other hand, learned Law Officer states that all the prosecution witnesses have fully supported the case of the prosecution; that the petitioner was apprehended red handed at the spot and 4 kilograms of contraband charas was recovered at the time of his arrest and as such she is not entitled to any concession.

5. We have heard the arguments advanced from both sides and have gone through the record available on the file.

6. The petitioner was found into possession charas weighing 4 kilograms which was wrapped in three packets and in a sack Garda Charas was also recovered. She was apprehended at the spot red handed. The prosecution witnesses fully supported version of the prosecution. The recovery of charas at the spot is fully proved. The chemical examiner report is also positive. The rest of the grounds agitated for suspension of the sentence required deeper appreciation which is not appropriate at this stage. The petitioner was convicted under section 9(c) of the Control of Narcotic Substances Act, 1997 after regular trial and the learned trial court came to the conclusion that prosecution has proved its case beyond reasonable doubt.

7. A Full Bench of the Hon'ble Supreme Court of Pakistan in the case of The State through Deputy Director, Anti-Narcotics Force, Karachi v. Mobin Khan reported as (2000 SCMR 299) has held that:--

"Third proviso to subsection (1) of section 497, Cr.P.C., cannot be pressed into service in view of subsection (1) of section 51 read with Clauses (b) and (c) of section 9 of the Control of Narcotic Substances Act, 1997, in a case in which the quantity of narcotic drug or psychotropic substance or controlled substance exceeds one kilogram and which may entail, inter alia, death sentence."

8. In view of the forgoing reasons, this petition having no force is hereby dismissed.

MH/S-90/L Petition dismissed.

**2015 P Cr. L J 1169**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**ZAFAR ALI and another---Petitioners**

**versus**

**The STATE and another---Respondents**

CrI. Misc. No.1424-B of 2015, decided on 19th February, 2015.

**Criminal Procedure Code (V of 1898)---**

---S. 498---Penal Code (XLV of 1860), Ss. 420, 468 & 471---Cheating and dishonestly inducing delivery of property, forgery for purpose of cheating, using as genuine a forged document---Pre-arrest bail, confirmation of---FIR had been lodged with an inordinate delay of 1-1/2 months, for which no plausible explanation was forthcoming---FIR had been lodged by the complainant with mala fide intention and ulterior motives on account of civil litigation, which was pending between the parties---Accused persons had been charged with offences which did not fall within the prohibitory clause of S.497, Cr.P.C.---Grant of bail was a rule, and refusal was an exception in the cases not punishable with death, imprisonment for life, or ten years imprisonment---Accused persons were previous non-convicts---Ad-interim pre-arrest bail earlier allowed to accused persons, was confirmed by High Court in circumstances.

Tariq Bashir and 5 others v. The State PLD 1995 SC 34 ref.

Malik Rab Nawaz for Petitioners.

Abdul Jabbar Dogar, D.D.P.P. with Ubaid Ullah, S.I. for the State.  
Muhammad Zahid Qureshi for the Complainant.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 498, Cr.P.C., the petitioners, Zafar Ali and Allah Yar seek pre-arrest bail in FIR No.1145/2014 dated 10-11-2014 for offences under sections 420, 468, 471, P.P.C. registered at Police Station City Chiniot, District Chiniot.

2. Arguments have been heard and the record perused.

3. The FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The date of occurrence as given in the body of the FIR is 25-9-2014 whereas the same was lodged with a long delay on 10-11-2014. The petitioner, Zafar Ali filed a civil suit qua the property mentioned in the FIR before the Senior Civil Judge Chiniot in which the complainant is also a party on 23-9-2014 prior to the lodging of the FIR and an order of status quo was granted by the trial Court on 23-9-2014. The said civil suit pertaining to the property mentioned in the FIR is still pending adjudication and has not been decided so far. The petitioners have been charged with offences which do not fall within the prohibitory clause of section 497, Cr.P.C, hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception as has been held by the august Supreme Court of Pakistan in Tariq Bashir and 5 others v. The State (PLD 1995 SC 34). It has vehemently been asserted by the learned counsel for the petitioners that the FIR has been lodged by the complainant with mala fide intention and ulterior motives on account of civil litigation which is pending between the parties. An assertion made by the learned counsel for the petitioners

that the petitioners are previous non-convict has not been negated by the learned Deputy District Public Prosecutor.

4. For what has been stated above, this petition is accepted, ad-interim pre-arrest bail earlier allowed to the petitioners vide order dated 4-2-2015 is hereby confirmed subject to their furnishing bail bonds in the sum of Rs.50,000 (Rupees fifty thousand only) each with one surety each in the like amount to the satisfaction of the learned trial Court.

HBT/Z-8/L Bail confirmed.

**2015 P Cr. L J 1473**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**MUHAMMAD IRSHAD---Petitioner**

**versus**

**The STATE and others---Respondent**

Criminal Miscellaneous No.4869-B of 2015, decided on 7th May, 2015.

**(a) Criminal Procedure Code (V of 1898)---**

---S. 498---Pre-arrest bail, grant of---Principle---Accused cannot claim pre-arrest bail as of right.

Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427 rel.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 498-A---Pre-arrest bail---Absence of accused---Effect---No Court is authorized to release a person by grant of pre-arrest bail, who is not present when his petition is called and heard---Physical presence of



accused is not only be insisted upon purely as a matter of propriety but is a statutory pre-condition for grant of pre-arrest bail.

Jahanzeb and another v. The State 1999 MLD 1222 and Shabbir and 6 others v. The State 2012 YLR 964 rel.

**(c) Criminal Procedure Code (V of 1898)---**

----Ss. 498 & 498-A---Penal Code (XLV of 1860), S.489-F---Dishonoring of cheque---Pre-arrest bail, grant of---Absence of accused---Trial Court declined pre-arrest bail to accused due to his absence at the time of hearing of bail application---Validity---Act of accused not appearing before Court of first instance when his petition seeking pre-arrest bail was being heard had a direct effect on the outcome of the case---Accused by not appearing in person before Trial Court had disentitled himself for the grant of pre-arrest bail by High Court---Although accused was charged with offence which carried maximum punishment of three years imprisonment and did not fall within the prohibitory clause of S.497, Cr.P.C. would not entitle the accused to grant of pre-arrest bail as of right---Pre-arrest bail was declined, in circumstances.

Rana Muhammad Arshad v. Muhammad Rafique and another PLD 2009 SC 427; Jahanzeb and another v. The State 1999 MLD 1222; Shabbir and 6 others v. The State 2012 YLR 964 and Shameel Ahmed v. The State 2009 SCMR 174 rel.

**(d) Criminal Procedure Code (V of 1898)---**

----Ss. 497 & 498---Pre-arrest bail, grant of---Case of accused not falling under prohibitory clause of S.497, Cr.P.C.---Principle---Grant of pre-arrest bail to an accused in every case which does not fall within the prohibitory

clause of S.497, Cr.P.C., is not a rule of universal application as each and every case has to be decided on its own facts.

Shameel Ahmed v. The State 2009 SCMR 174 rel.

Rana Shakeel Ahmed Khan for Petitioner.

Ali Hassan District Public Prosecutor for the State

Naseer-ud-Din Khan Nayer for the Complainant.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 498, Cr.P.C. the petitioner, Muhammad Irshad seeks pre-arrest bail in FIR No.651/2013 dated 2-8-2013 for an offence under section 489-F, P.P.C. registered at Police Station A-Division (MPS) District Sheikhpura.

2. The learned counsel for the petitioner submits that the FIR has been lodged with an inordinate delay, the occurrence is stated to have taken place on 27-6-2013 whereas the FIR was lodged on 2-8-2013 for which no plausible explanation is forthcoming. Civil litigation between the parties qua the dispute in hand is pending adjudication before a Civil Court at Gujranwala. The cheque as referred to in the FIR was issued as a measure of guarantee and not in order to discharge an existing financial obligation. The petitioner has paid a sum of Rs.69,00,000 to the complainant out of the outstanding amount. The petitioner has been charged with an offence which does not fall within the Prohibitory Clause of section 497, Cr.P.C. hence he is entitled to the grant of pre-arrest bail.

3. The learned District Public Prosecutor and the learned counsel for the complainant have opposed this petition by submitting that the petitioner has been named in the FIR and a specific role has been attributed to him. The petitioner has been found to be guilty during the investigation which

has taken place. There is no mala fide on the part of the complainant to have lodged a false and frivolous criminal case against the petitioner.

4. It is trite that an accused cannot claim pre-arrest bail as of right. The august Supreme Court of Pakistan in Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427) has laid down in clear and unequivocal terms that grant of pre-arrest bail is an extraordinary relief to be granted only in an extraordinary situation. Pre-arrest bail is not to be used as a substitute or an alternative for post arrest bail. In the absence of FIR being lodged with mala fide intention and ulterior motives and where the conduct of the accused has been contumacious he would not be entitled to the grant of pre-arrest bail.

5. In the instant case the petitioner played hide and seek with the trial court. When the case was first called for hearing the petitioner informed the learned Additional Sessions Judge that his learned counsel would appear shortly. Thereafter the case was called many times but the petitioner and his learned counsel never turned up. This petition is silent as to why the petitioner failed to appear before the Court of first instance when his petition was dismissed. The learned counsel for the petitioner while addressing arguments made no effort to explain as to why the petitioner was not present when the petition was decided.

6. The letter of law with regard to the grant of pre-arrest bail took a different turn when section 498-A, Cr.P.C. was incorporated in The Code of Criminal Procedure 1898 by Act XIII of 1976. It reads as follows:--

[498-A. No bail to be granted to a person not in custody, in Court or against whom no case is registered etc. Nothing in section 497 or section 498 shall be deemed to require or authorize a court to release on bail, or to direct to be admitted to bail any person who is not in custody or is not

present in Court or against whom no case stands registered for the time being and an order for the release of a person on bail, or direction that a person be admitted to bail shall be effective only in respect of the case that so stands registered against him and is specified in the order or direction.]

After the insertion of section 498-A, Cr.P.C. in The Code of Criminal Procedure 1898 no court is authorized to release a person by grant of pre-arrest bail who is not present when his petition is called and heard. After the enactment of section 498-A, Cr.P.C., the physical presence of the accused is not only to be insisted upon purely as a matter of propriety, but is a statutory pre-condition for the grant of pre-arrest bail. *Jahanzeb and another v. The State* (1999 MLD 1222) and *Shabbir and 6 others v. The State* (2012 YLR 964) may be read with considerable advantage.

7. It is clearly established that the conduct of the petitioner has been contumacious as he deliberately absented himself from the court on the day his petition seeking pre-arrest bail was to be decided. Keeping in view the law laid down by the august Supreme Court of Pakistan in *Rana Muhammad Arshad v. Muhammad Rafique and another* PLD 2009 SC 427) and the effect of section 498-A, Cr.P.C. the petitioner is not entitled to the relief being sought. The act of the petitioner not appearing before the Court of first instance when his petition seeking pre-arrest bail was being heard would have a direct effect on the outcome of this case. The petitioner by not appearing in person before the trial court has disintitiled himself for the grant of pre-arrest bail by this Court. Although the petitioner has been charged with an offence which carries a maximum punishment of three years imprisonment and does not fall within the prohibitory clause of section 497, Cr.P.C. he would not be entitled to the grant of pre-arrest bail as of right. The grant of pre-arrest bail to an accused in every case which does not fall within the prohibitory clause of section 497, Cr.P.C. is not a rule of universal application as each and every case is to be decided on its

own facts. Shameel Ahmed v. The State (2009 SCMR 174) may be read with great advantage. The petitioner has been unable to demonstrate that the FIR was lodged by the complainant with mala fide intention and ulterior motives in order to victimize, disgrace or dishonour him.

8. For what has been stated above, this petition stands dismissed. Ad-interim pre-arrest bail earlier allowed to the petitioner vide order dated 16-4-2015 is hereby recalled.

MH/126-M/L Petition dismissed.

**PLJ 2015 Cr.C. (Lahore) 527**  
**Present: MUHAMMAD YAWAR ALI, J.**  
**REHMAT ALI--Petitioner**  
**versus**  
**STATE and another --Respondents**

CrI. Misc. No. 2644-B of 2015, decided on 7.4.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 302, 311, 148 & 149--  
Bail, grant of--According to the prosecution case the petitioner herein and "M" caught hold of "S", forcibly deboarded him from the car whereupon "A" fired at him and caused his death--Similarly the petitioner and "M" also caught hold of "L", deboarded her from the car whereupon "A" fired at her and caused her death--As per the prosecution case the petitioner has not been attributed any injury to the deceased or anyone else--During the course of investigation the co-accused have been found to be innocent and they were exonerated by the complainant himself--Another co-accused was also not found to be present at the place of occurrence and she has been allowed bail by High Court--All these factors would bring the case of the petitioner within the ambit of further inquiry calling into his guilt making

him eligible for the grant of bail as of right and not by way of grace or concession--Petitioner was a previous non-convict has not been negated by the Deputy District Public Prosecutor--Bail was admitted. [Pp. 528 & 529]

A & B

2012 SCMR 1137 *ref.*

*Mr. A.D. Bhatti*, Advocate for Petitioner.

*Mr. Usman Iqbal*, DDPP for State.

Complainant in person.

Date of hearing: 7.4.2015.

### **ORDER**

Through this petition filed under Section 497, Cr.P.C. the petitioner Rehmat Ali seeks post arrest bail in FIR No. 269/2014, dated 22.10.2014 for offence under Sections 302, 311, 148, 149, PPC registered at Police Station City Phoolnagar, District Kasur.

2. The complainant present in person submits that he is unable to engage his counsel and would rely on the arguments to be advanced by the learned Deputy District Public Prosecutor.

3. Arguments have been heard and the record perused.

4. According to the prosecution case Rehmat Ali the petitioner herein and Munawar Ali caught hold of Sharafat Ali, forcibly deboarded him from the car whereupon Asif Ali fired at him and caused his death. Similarly the petitioner and Munawar Ali also caught hold of Lubna Bibi, deboarded her from the car whereupon Asif Ali fired at her and caused her death. As per the prosecution case the petitioner has not been attributed any injury to the deceased or anyone else. During the course of investigation the co-accused Abdul Sattar and Ghulam Rasool have been found to be innocent and they were exonerated by the complainant himself. Another co-accused Jameela Bibi was also not found to be present at the place of occurrence and she has been allowed bail by this Court. All these factors would bring the case of the petitioner within the ambit of further inquiry calling into his

guilt making him eligible for the grant of bail as of right and not by way of grace or concession as has been held by the august Supreme Court of Pakistan in *Ehsan Ullah versus The State* (2012 SCMR 1137). An assertion made by the learned counsel for the petitioner that the petitioner is a previous non-convict has not been negated by the learned Deputy District Public Prosecutor.

5. For what has been stated above, this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the learned trial Court.

(A.S.)

Bail granted.

**PLJ 2015 Cr.C. (Lahore) 562**  
**Present: MUHAMMAD YAWAR ALI, J.**  
**GHULAM HUSSAIN--Petitioner**  
**versus**  
**STATE and another—Respondents**

CrI. Misc. No. 4670-B of 2015, decided on 20.4.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 498--Pakistan Penal Code, (XLV of 1860), S. 406--Bail before arrest--Confirmed--An inordinate delay in lodging FIR--No plausible explanation--According to the prosecution case, the Pay Order for a sum of Rs. 29,00,000/- as referred to in the FIR was issued in the name of one and not in the name of the petitioner--The petitioner has been charged with an offence which carries a maximum punishment of seven years imprisonment and does not fall within the prohibitory clause of Section 497, Cr.P.C. hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception--FIR has been lodged by the complainant against the petitioner

with *mala fide* intention and ulterior motives as a counterblast to a civil suit for recovery of Rs. 21,00,000/- filed by the complainant against the petitioner--There was nothing on the record to establish that the petitioner has any previous criminal antecedents and was a previous non-convict--Petition was accepted, pre-arrest bail was confirmed. [P. 563]

A & B

PLD 1995 SC 34, *ref.*

*Mr. Ahmed Ullah Bajwa*, Advocate with Petitioner.

*Rana Muhammad Shafique*, D.P.G. with for State.

*Mr. Muhammad Ijaz Mughal*, Advocate for Complainant.

Date of hearing: 20.4.2015.

#### **ORDER**

Through this petition filed under Section 498, Cr.P.C., the petitioner Ghulam Hussain seeks pre-arrest bail in FIR No. 160/2015 dated 19.02.2015 for offence under Section 406, PPC registered at Police Station South Cantt., District Lahore.

2. Arguments have been heard and the record perused.

3. It is observed that the FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place on 06.05.2013 whereas the FIR was lodged with a long delay on 19.02.2015. According to the prosecution case, the Pay Order for a sum of Rs. 29,00,000/- as referred to in the FIR was issued in the name of one Muhammad Asif and not in the name of the petitioner. The petitioner has been charged with an offence which carries a maximum punishment of seven years imprisonment and does not fall within the prohibitory clause of Section 497, Cr.P.C. hence, in cases not punishable with death, imprisonment for life or ten years imprisonment grant of bail is a rule and refusal is an exception as has been held by the august Supreme Court of Pakistan in *Tariq Bashir & 5 others vs. The State* (PLD 1995



S.C.34). It has vehemently been asserted by the learned counsel for the petitioner that the FIR has been lodged by the complainant against the petitioner with *mala fide* intention and ulterior motives as a counterblast to a civil suit for recovery of Rs. 21,00,000/- filed by the complainant against the petitioner. There is nothing on the record to establish that the petitioner has any previous criminal antecedents and is a previous non-convict.

4. For what has been stated above, this petition is accepted, ad-interim pre-arrest bail earlier allowed to the petitioner *vide* order dated 13.04.2015 is hereby confirmed subject to his furnishing bail bonds in the sum of Rs. 50,000/- (Rupees fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.

(A.S.) Bail confirmed.

**PLJ 2015 Lahore 1036**

**[Multan Bench Multan]**

**Present: MUHAMMAD YAWAR ALI, J.**

**Mst. SAFIA and another--Petitioners**

**versus**

**STATION HOUSE OFFICER, P.S. SHAHWALI, DISTRICT RAJANPUR and  
8 others—Respondents**

W.P. No. 16873 of 2014, decided on 27.1.2015.

**Constitution of Pakistan, 1973--**

----Art. 199--Pakistan Penal Code, (XLV of 1860), Ss. 363, 380, 496-A, 109--Quashing of FIR--FIR was lodged with *mala fide* intention and ulterior motives--Married with her free will and consent--Never abducted or enticed away by anyone--Abductee appeared before High Court and stated in clear terms that she was never abducted--Validity--Alleged abductee who was star witness had stated before High Court in clear and unequivocal terms that she was never abducted or enticed away by

anyone rather she had married with her free will and consent--High Court was only to see whether accused were guilty of abducting or enticing away alleged victim any assertion with regard to validity of *nikahnama* would be of no consequence--Where all abductees state in clear terms that they were never abducted by anyone, any continuation of criminal proceedings FIR would be an abuse of process of law--FIR was thus contumacious and tainted with *mala fide* meaning that there is no chance of accused being convicted--Petition was allowed. [Pp. 1038 & 1039] A, B & C

1970 SCMR 437, PLD 1983 FSC 9 & PLD 2009 Lah. 546, *ref.*

*Malik Amir Manzoor Awan*, Advocate for Petitioners.

*Mirza Muhammad Saleem Baig*, Addl. A.G. for Respondents.

*M/s. Sardar Tariq Sher Khan & Sardar Abdul Qayyum Khan*, Advocates for Respondent No. 3.

Date of hearing: 27.1.2015.

#### **JUDGMENT**

Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners seek quashing of FIR No. 64/2014 dated 06.12.2014 for offence under Sections 363, 380, 496-A, 109 PPC registered at Police Station Shahwali, District Rajanpur.

2. According to the FIR on 28.11.2014 the accused abducted *Mst. Shahzadi Bibi* wife of the complainant, his daughter *Hifza Bibi* a minor 1½ years old and a grownup daughter *Safia Bibi* stated to be 11 years of age. The accused also forcibly took away jewellery, cash and certain documents pertaining to a car Suzuki Mehran, stated to be the property of the complainant.

3. The learned counsel for the petitioners submits that the impugned FIR has been lodged by the complainant with *mala fide* intention and ulterior motives. The petitioner, *Mst. Safia Bibi* was never abducted by anyone rather she has married the other petitioner *Muhammad Shahzad alias*

Shahzada with her free will and consent on 01.12.2014 as is evident from a bare reading of the *Nikahnama* which has been appended with this petition.

4. The alleged abductee *Mst. Safia Bibi*, the petitioner herein who is present in Court has stated in clear and unequivocal terms that she was never abducted or enticed away by anyone and that she has married the other petitioner Muhammad Shahzad *alias* Shahzada who is an accused in the impugned FIR.

5. The learned Law Officer as well as the learned counsel for the complainant have opposed this petition by submitting that the petitioner Muhammad Shahzad *alias* Shahzada has been named in the FIR and a specific role has been attributed to him. The accused persons have committed a cognizable offence, hence they are to be tried for the offence they have committed. There is no *mala fide* on the part of the complainant to have lodged a false and frivolous criminal case against the accused persons. The *Nikahnama* being relied upon by the petitioners is a fake document. In any case the petitioner *Mst. Safia Bibi* being a minor could not have given any valid consent to her marriage with the other petitioner Muhammad Shahzad *alias* Shahzada, hence this petition is liable to be dismissed.

6. After going through the record it is observed that one Shahzadi Bibi wife of the complainant, an alleged abductee, appeared before the Investigating Officer on 18.12.2014 and recorded her statement to the effect that she and her minor daughter Hifza were never abducted by anyone. The present petitioner *Mst. Safia Bibi* an alleged abductee has also appeared before this Court and stated in clear terms that she was never abducted by anyone and that she has married the other petitioner Muhammad Shahzad *alias* Shahzada with her free will and consent on 01.12.2014. On 14.01.2015 the petitioner *Mst. Safia Bibi* was directed to appear before the Medical Superintendent, Nishtar Hospital, Multan so that she could be medically

examined and her age ascertained. The Medical Superintendent, Nishtar Hospital, Multan constituted a Medical Board and according to the opinion of the Medical Board dated 24.01.2015 *Mst. Safia Bibi* would be 13-15 years of age.

7. *Mst. Safia Bibi*, the alleged abductee who is a star witness has stated before this Court in clear and unequivocal terms that she was never abducted or enticed away by anyone rather she has married the other petitioner *Muhammad Shahzad alias Shahzada* with her free will and consent on 01.12.2014. It is common ground that *Mst. Safia Bibi* has attained puberty. Once a girl attains puberty (under Muhammadan Law) she can contract marriage with a person of her own choice and such a marriage would not be invalid. *Mauj Ali versus Syed Safdar Hussain Shah and another* (1970 SCMR 437) can be read with great advantage. The Federal Shariat Court in a judgment titled *Muhammad Iqbal versus The State* (PLD 1983 Federal Shariat Court

9) observed in clear terms that a girl's marriage with a man of her own choice ought to be treated as a valid marriage and it is not necessary for her to obtain the consent of her wali. An assertion made by the learned counsel for the complainant that the *Nikahnama* being relied upon by the petitioners is a fake document cannot be given any weight. This Court in *Zarjuma alias Jamna Bibi versus Station House Officer, Police Station Saddar District Bhakkar and 4 others* (PLD 2009 Lahore 546) has held that law does not permit others to challenge the validity of *Nikahnama* when its contents are admitted by the husband and the wife and they have so stated before this Court. In the instant case this Court is only to see whether the accused are guilty of abducting or enticing away the alleged victim and any assertion with regard to the validity of the *Nikahnama* would be of no consequence.

8. The other abductee *Mst. Shahzadi Bibi* stated to be the wife of the complainant also recorded her statement before the Investigating Officer on

18.12.2014 to the effect that she and her minor daughter Hifza were never abducted by anyone. Where all the abductees state in clear terms that they were never abducted by anyone, any continuation of criminal proceedings in pursuance of the impugned FIR would be an abuse of process of law. The impugned FIR is thus contumacious and tainted with *mala fide* meaning thereby that there is no chance of the accused being convicted.

9. The upshot of the above discussion is that this petition is allowed and the impugned FIR No. 64/2014, dated 06.12.2014 for offence under Sections 363, 380, 496-A, 109 PPC registered at Police Station Shahwali, District Rajanpur stands quashed.

(R.A.) Petition allowed.













**2016 P Cr. L J 330**

**[Lahore]**

**Before Muhammad Yawar Ali and Erum Sajad Gull, JJ**

**RANA ABBAS---Petitioner**

**Versus**

**The STATE and others---Respondents**

Criminal Misc. No. 11142-B of 2015, decided on 8th September, 2015.

**Criminal Procedure Code (V of 1898)---**

----S. 497---Control of Narcotic Substances Act (XXV of 1997), Ss. 9(c) & 51---Recovery of narcotics---Bail, refusal of---Heinous offence---Charas weighing 1650 grams was recovered from accused at the spot---Sufficient incriminating evidence/material existed on record to show presence and connectivity of accused with alleged crime---Accused was involved in yet another criminal case of similar nature---Offence with which accused was charged was heinous in its nature which squarely fell within the four corners of the prohibition as contemplated by S. 51 of Control of Narcotic Substances Act, 1997---High Court declined to exercise discretion in favour of accused---Bail was declined in circumstances.

Muhammad Hanif v. The State 2003 SCMR 1237; Fida Jan v. The State 2001 SCMR 36; Zafar v. The State 2008 SCMR 1254 and Tariq Mehmood v. The State through Deputy Attorney-General, Peshawar PLD 2009 SC 39 rel.

Najeeb Faisal Chaudhry for Petitioner.

Dr. Muhammad Anwar Khan Gondal, Additional Prosecutor General and Muhammad Akram ASI with record for Respondents.

**ORDER**

Petitioner (Rana Abbas) seeks his post-arrest bail in a criminal case vide FIR No.318 dated 03.07.2015 registered at Police Station Millat Park,

Lahore for the commission of offence under section 9(c) of the Control of Narcotic Substances Act, 1997.

2. Contents of the FIR reveal that the petitioner was apprehended at the spot and from his possession 1650 grams Charas along with sale proceed amounting to Rs.5000/- was recovered.

3. Learned counsel for the petitioner strenuously argued that facts and circumstances leading to the alleged recovery from the person of the petitioner are, ex facie, incredulous being suspicious and that the so called complainant of the FIR being an ASI was incompetent and ineligible either to investigate the case or to have prepared the recovery memo, hence, valid grounds for bail have been made out.

4. The learned Addl.PG strongly opposes the grant of bail to the petitioner.

5. We have heard the learned counsels for the parties at length and perused available record. The petitioner was apprehended red handed along with the contraband narcotic and sale proceed. Prima facie, straightforward narration of the incident has been incorporated in the FIR. There is not an iota of evidence to indicate any ill will or grudge, and in absence of any malice, motive or bad blood on the part of the police, it can safely be presumed that search operation was carried out in the manner as stated in the FIR. Be that it may, it is not the case of the learned counsel that police party had substituted the petitioner with the real accused and that the recovery of contraband narcotic has been planted upon him.

6. Insignificant procedural irregularities and minor lapses being negligible and curable do not reflect on the bona fides of the police. More particularly, when the presence and participation of the petitioner and the factum of recovery stands established beyond shadow of doubt. We are of

the considered view that the proceedings conducted by the ASI in violation of the provisions of sections 21 and 22 of the Control of Narcotic Substances Act, 1997 would not at all vitiate the trial. At the most such an irregularity is curable under section 537, Cr.P.C. While holding so, we are fortified by the dictum of law enunciated by the Honorable Supreme Court of Pakistan in the case reported as (2003 SCMR 1237) Muhammad Hanif v. The State.

7. The assertion of the learned counsel for the petitioner with reference to the alleged violation of section 103, Cr.P.C., seems to be erroneous and misconceived as under section 25 of the Control of Narcotic Substances Act, 1997, section 103, Cr.P.C. has been excluded. Reliance is placed on (2001 SCMR 36) Fida Jan v. The State and (2008 SCMR 1254) Zafar v. The State.

8. The question of delay as pointed out by the learned counsel for the petitioner in sending the samples to the office of Chemical Examiner, in our view would hardly effect and vitiate the sanctity of the recovery proceedings. Reliance is respectfully placed on the case reported as (PLD 2009 Supreme Court 39) Tariq Mehmood v. The State through Deputy Attorney-General, Peshawar.

9. Prima facie, sufficient incriminating evidence/material exists on record to show the presence and connectivity of the petitioner with the alleged crime. According to police, the petitioner is also involved in yet another criminal case of similar nature. Obviously, the offence with which the petitioner stands charged being heinous in its nature squarely falls within the four corners of the prohibition as contemplated by section 51 of the Control of Narcotic Substances Act, 1997.

10. For the foregoing facts and reasons, we find that no case for the exercise of discretion in favor of the petitioner is made out. And consequently, the captioned petition being devoid of any merit is accordingly dismissed. It is clarified that the observations enumerated ibid are absolutely tentative in nature and restricted only to the extent of this particular petition having no nexus and relevance with the trial, which shall be concluded quite independently and purely on merit.

MH/A-137/L Petition dismissed.

**2016 P Cr. L J 1578**  
**[Lahore]**  
**Before Muhammad Yawar Ali, J**  
**MUHAMMAD SHAKEEL KHAN---Petitioner**  
**Versus**  
**ALI RAZA and others---Respondents**

Criminal Misc. No. 3844-CB of 2015, decided on 5th October, 2015.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 497(5)---Penal Code (XLV of 1860), Ss. 302, 109, 148 & 149---Qatl-i-amd, abetment, rioting being armed with deadly weapons and common object---Bail, cancellation of---Accused was alleged to have caused two fire arm injuries on body of deceased, which resulted in his death---Alleged occurrence happened during dead of night---Complainant had seen occurrence taking place clearly---Cause of death suggested by final post-mortem examination report had supported complainant's version as to injuries caused by accused---Alleged injuries were sufficient to cause death in ordinary course of nature---Port-mortem examination report lent credence to prosecution case---Trial Court, while granting bail to accused lost sight of fact that all accused persons had been nominated in promptly

lodged FIR, and specific role had been ascribed to each of them---Two fire injuries, which had contributed towards death of deceased, were attributed to accused and to none else---No plausible explanation could be provided as to why complainant would leave real culprits and, in their place, implicate present accused with commission of offence immediately after offence had been committed---Accused had been charged with offence which not only fell within prohibitory clause of S. 497(5) of Cr.P.C. but also attracted capital punishment---No cogent material was available on record to make present case one of further inquiry into guilt of accused---Post-arrest bail, earlier allowed to accused, was cancelled---Application for cancellation of bail was allowed accordingly.

Malik Javaid Iqbal v. The State and others PLD 2015 SC 250 rel.

**(b) Criminal Procedure Code (V of 1898)---**

----S. 497(5)---Bail, cancellation of---Principles---High Court, in normal circumstances, would not cancel bail earlier allowed to accused, but where bail granting order is perverse, patently illegal and passed in violation of settled principles as to grant of bail, High Court would not hesitate in interfering and cancelling bail.

The State/Anti-Narcotic through Director-General v. Rafiq Ahmad Channa 2010 SCMR 580 rel.

**(c) Criminal Procedure Code (V of 1898)---**

----S. 154---Information in cognizable offences---Scope---Sanctity is attached to FIR, particularly, when same is lodged promptly.

**(d) Criminal Procedure Code (V of 1898)---**

----S. 173---Report of police officer---Scope---Ipse dixit of police officials is not binding on court.

Faisal Ghafoor Khokhar for Petitioner.

Sarfraz Ahmad Khattana, Deputy District Public Prosecutor with Aftab, S.I.  
Aftab Hussain Bhatti for Respondent No.1.

## **ORDER**

**MUHAMMAD YAWAR ALI, J.**---Through this petition filed under section 497(5), Cr.P.C. the petitioner seeks cancellation of post-arrest bail allowed in FIR No.471/2014 dated 12.08.2014 for offence under sections 302, 109, 148, 149, P.P.C. registered at Police Station Saddar Jaranwala District Faisalabad to respondent No.1 by the learned Additional Sessions Judge, Jaranwala vide order dated 19.02.2015.

2. Arguments have been heard and the record perused.

3. According to the FIR during the intervening night of 11th and 12th of August 2014 Ali Raza respondent No.1 who was armed with repeater shotgun fired two times causing two grievous injuries to the deceased Latif Khan, father of the complainant. All this happened in the dead of the night. The deceased was riding his motorcycle while the complainant and Muhammad Khalil Khan also on a motorcycle were lagging just behind him. The complainant and Muhammad Khalil Khan saw the occurrence taking place clearly because of the headlight of their motorcycle. Respondent No.1 Ali Raza fired two shots with his repeater shot gun hitting the deceased father of the complainant on his neck and just below the right shoulder. In the Post Mortem Examination Report it has been opined that the time which elapsed between the death and the Post Mortem was ten hours. In the final opinion it was stated that the death occurred due to haemorrhage and shock resulting from injuries Nos.1, 2, 4, 5, 6 and 7 which were sufficient to cause death in the ordinary course of nature and would include the injuries attributed to respondent No.1 Ali Raza. The Post



Mortem Examination Report lends credence to the prosecution case. During the investigation which took place respondent No.1 Ali Raza was declared to be innocent and a discharge report was prepared and submitted before the Judicial Magistrate. The Judicial Magistrate did not agree with the same. It is trite that ipse dixit of the police officials would not be binding on the court. The learned Additional Sessions Judge, Jaranwala while granting bail to the accused Ali Raza vide order dated 19.02.2015 lost sight of the fact that all the accused were nominated in a promptly lodged FIR and a specific role was ascribed to them. Two firearm injuries which clearly contributed towards the death of Latif Khan father of the complainant were attributed to respondent No.1 Ali Raza and none else. The learned Deputy District Public Prosecutor was unable to convince this Court that the Investigating Officer had cogent reasons for holding that the accused Ali Raza never participated in the commission of offence. It is trite that sanctity is to be attached to an FIR more so if it has been lodged promptly. No plausible explanation is forthcoming as to why the complainant would leave the real culprits and in their place implicate the present accused with the commission of offence immediately after the offence had been committed. Respondent No.1 Ali Raza has been charged with an offence which not only falls within the prohibitory clause of section 497, Cr.P.C. but also attracts capital punishment. The august Supreme Court of Pakistan in Malik Javaid Iqbal v. The State and others (PLD 2015 Supreme Court 250) has held in clear terms that an accused charged with an offence which falls within the prohibitory clause cannot be allowed post arrest bail unless his case attracts subsection (2) of section 497, Cr.P.C. In the instant case there is no cogent material available on the record to make the case against respondent No.1 one of further inquiry calling into his guilt. In normal circumstances this Court would not cancel bail earlier allowed to an accused but where the bail granting order is perverse, patently illegal and passed in violation of settled principles for the grant of bail this Court will not hesitate in interfering and cancelling bail earlier

allowed to him. The State/Anti-Narcotic through Director-General v. Rafiq Ahmad Channa (2010 SCMR 580) may be read with considerable advantage.

4. For what has been stated above this petition is accepted and bail earlier allowed to respondent No.1 Ali Raza by the learned Additional Sessions Judge, Jaranwala vide order dated 19.02.2015 is cancelled. Respondent No.1 Ali Raza shall be taken into custody and sent to the judicial lockup as an under trial prisoner.

SL/M-313/L Application allowed.

**P L D 2016 Lahore 248**  
**Before Muhammad Yawar Ali, J**  
**SALIM JAVED BAIG and others---Petitioners**  
**Versus**  
**FEDERAL OMBUDSMAN and others---Respondents**

Writ Petition No.31289 of 2015, decided on 19th October, 2015.

**(a) Protection against Harassment of Women at the Workplace Act (IV of 2010)----**

----Ss. 8 & 2(1)----Constitution of Pakistan, Art. 199---Constitutional petition---Alternate remedy, availability of---Principles---Accused, an Association of Lawyers, sought rejection of complaint pending before Federal Ombudsman on ground that Federal Ombudsman had no jurisdiction to proceed with the matter, as their office did not fall within meaning of 'organization' as defined under S. 2(1) of Protection against Harassment of Women at the Workplace Act, 2010---Accused, before filing present petition, had already filed application before Federal Ombudsman seeking the same relief, which was still pending for adjudication---Validity--Present constitutional petition was only maintainable if no other alternative remedy was available to accused---Court observed that for

exercise of jurisdiction under Art. 199 of the Constitution, availability of no other remedy was condition precedent---Matter was still pending before Federal Ombudsman without any final verdict---Federal Ombudsman had only issued notice to, and called upon, accused to appear in complaint---No adverse order had thus far been passed against accused by Federal Ombudsman---In absence of any findings of Federal Ombudsman, present petition would not be maintainable---Constitutional petition was dismissed in circumstances.

Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others 2014 SCMR 122; Adamjee Insurance Company Ltd. v. Pakistan through the Secretary to Government of Pakistan in the Ministry of Finance, Islamabad and 5 others 1993 SCMR 1798; Sheikh Rashid Ahmad v. D.M. Rawalpindi and others PLJ 2004 Lah. 1221; Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others 2001 PLC(C.S.) 939 and Virasat Ullah v. Bashir Ahmad, Settlement Commissioner (Industries) and another 1969 SCMR 154 rel.

**(b) Constitution of Pakistan--**

---Art.199---Constitutional petition---Alternate remedy, availability of---Principles---Constitutional petition is maintainable only if no other alternate remedy is available.

Mian Muhammad Hussain Chotya for Petitioners.

Muhammad Javed Kasuri, Deputy Attorney General for Pakistan.

**ORDER**

**MUHAMMAD YAWAR ALI, J.**---The facts of the case which need to be stated for the disposal of this petition are that respondent No.2 has filed a complaint dated 14.09.2015 before the Federal Ombudsman Islamabad while invoking The Protection Against Harassment Of Women at the Workplace Act, 2010. On 17.09.2015 a notice was issued by the Federal

Ombudsman Secretariat and was received by the petitioners. The petitioners being aggrieved by the assumption of jurisdiction by the Federal Ombudsman filed an application dated 12.10.2015 for rejection of the complaint on the ground that the Federal Ombudsman has no jurisdiction whatsoever to proceed in the matter. The application filed by the petitioners for rejection of the complaint in limine is pending adjudication before the Federal Ombudsman and has not been decided so far.

2. The learned counsel for the petitioners has contended that the petitioners are practicing lawyers working under the name and style of "Salim Baig and Associates". The Federal Ombudsman could only assume jurisdiction if an offence was statedly committed in an organization which has been defined in Section 2 Subsection (L) of The Protection against Harassment Of Women at the Workplace Act, 2010. A bare reading of the said provision of law would show that a Lawyer's Office would not fall within its ambit. In any case after the 18th amendment becoming part and parcel of the Constitution of the Islamic Republic of Pakistan 1973 The Punjab Protection against Harassment of Women at the Workplace (Amendment) Act, 2012 (III of 2013) has been promulgated meaning thereby that an aggrieved person working in the Province of Punjab may possibly have a remedy under the Act referred to above but cannot approach the Federal Ombudsman for the redressal of a grievance. Since the Federal Ombudsman has no jurisdiction to proceed in the matter the impugned notice which has been issued is liable to be set aside.

3. The petitioners on their own saying have filed an application dated 12-10-2015 before the Federal Ombudsman seeking rejection of the complaint lodged by respondent No.2 in limine. As the application seeking rejection of the complaint on the ground that the Federal Ombudsman has no jurisdiction to proceed in the matter is pending adjudication the present writ petition would not be maintainable. It is trite law that a writ petition

filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 is only maintainable if no other alternative remedy is available to the petitioner as has been held by the Apex Court in Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others (2014 SCMR 122)., The august Supreme Court of Pakistan in Adamjee Insurance Company Ltd. v. Pakistan through the Secretary to Government of Pakistan in the Ministry of Finance, Islamabad and 5 others (1993 SCMR 1798) has clearly held that no other remedy being available to an aggrieved person is a condition precedent for the exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. Similarly in Sheikh Rashid Ahmad v. D.M. Rawalpindi and others (PLJ 2004 Lahore 1221(FB)) a Full Bench of this Court has held where an another authority is competent to consider and grant the required relief any interference by this Court while exercising its extraordinary constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 would produce a sense of distrust in the authority seized of the dispute. The matter is still pending before the Federal Ombudsman and he has not given his final verdict. The Federal Ombudsman has only issued a notice and called upon the petitioners to appear in the complaint which has been filed against them. No adverse order has been passed against the petitioners till today and they have simply been called upon to appear and defend themselves in a complaint filed against them. In the absence of any finding given by the Federal Ombudsman this petition would not be maintainable. Muhammad Akhtar Sherani and 35 others v. The Punjab Textbook Board, Lahore and 4 others (2001 PLC (C.S.) 939) and Virasat Ullah v. Bashir Ahmad, Settlement Commissioner (Industries) and another (1969 SCMR 154) may be read with considerable advantage.

4. For what has been stated above, this petition without any substance stands dismissed in limine.

SL/S-125/L

Petition dismissed.

**PLJ 2016 Cr.C. (Lahore) 117**

**Present: MUHAMMAD YAWAR ALI, J.**

**FAISAL ALI--Petitioner**

**versus**

**STATE and another--Respondents**

CrI. Misc. No. 11206-B of 2015, decided on 1.10.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 365-B & 376-I--Bail, grant of--Abductee changed her version--MLR of victim does not lend credence--Hymen was ruptured/old--Section 365-B, PPC was deleted--

**Held:** All these factors would bring case of petitioner within ambit of further inquiry guilt making him eligible for grant of bail as of right and not by way of grace or concession. [P. 118] A

*Mr. Iftikhar Ahmad Bhatti*, Advocate for Petitioner.

*Mr. Sarfraz Ahmad Khatana*, DDPP for State.

*Mr. Abdul Samad Khan Bisriya*, Advocate for Complainant.

Date of hearing: 1.10.2015.

**ORDER**

Through this petition filed under Section 497, Cr.P.C. the petitioner Faisal Ali seeks post arrest bail in FIR No. 227/2015 dated 17.6.2015 for offence under Section 365-B, PPC later on added Section 376-I, PPC registered at Police Station Saddar Pindi Bhattian, District Hafizabad.

2. Arguments have been heard and the record perused.

3. It is observed that the FIR has been lodged with an inordinate delay for which no plausible explanation is forthcoming. The offence is stated to have taken place on 14.06.2015 at 8:00 P.M. however the FIR was lodged with a delay on 17.06.2015. According to the FIR the victim left her house alongwith her mother to answer a call of nature where she was abducted by the petitioner alongwith the co-accused Safdar and Allah Ditta. The alleged abductee while getting her statement recorded under Section 161, Cr.P.C. did not depose in line with the contents of the FIR and stated that

she had been abducted only by the petitioner and Safdar and not by the other co-accused Allah Ditta. The alleged abductee while getting her statement recorded under Section 164, Cr.P.C. again changed her stance by submitting that one of the accused pointed a gun at her father while abducting her from her home. According to the statements recorded by the victim under Sections 161 and 164, Cr.P.C. the abduction took place from the house of the complainant and not from outside the house where the victim had allegedly gone to answer a call of nature as has been alleged in the FIR. The Medico Legal Report of the victim does not lend credence to the prosecution case according to which the hymen is "ruptured/old". In all fairness the learned Deputy District Public Prosecutor has pointed out that Section 365-B, PPC has been deleted as is evident from a bare reading of Case Diary No. 7, dated 2.7.2015. All these factors would bring the case of the petitioner within the ambit of further inquiry calling into his guilt making him eligible for the grant of bail as of right and not by way of grace or concession as has been held by the august Supreme Court of Pakistan in

*Ehsan Ullah versus The State (2012 SCMR 1137)*. There is nothing on the record to establish that the petitioner has any criminal antecedents.

4. For what has been stated above this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the learned trial Court.

(R.A.) Bail accepted.

**PLJ 2016 Cr.C. (Lahore) 145**

**Present: MUHAMMAD YAWAR ALI, J.**

**RANJHA--Petitioner**

**Versus**

**STATE and another--Respondents**

CrI. Misc. No. 4798-B of 2015, decided on 12.6.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 320 & 322--Bail before arrest, confirmed--*Mala fide* intention and ulterior motives--Section 322, PPC was deleted and Section 320, PPC was bailable--**Held:** Accused had not been nominated in FIR and was subsequently implicated with commission of offence by complainant while getting his supplementary statement recorded--Accused had been charged with offence which was bailable he would be entitled to grant of bail--Bail was granted. [P.

146] A PLJ 2009 Cr.C. (Lah.) 1046 & 2001 PCr.LJ 1082, *rel.*

*Mr. Muhammad Youns Bhullar*, Advocate for Petitioner.

*Ch. Usman Iqbal*, DDPP for State.

Nemo for Complainant.

**ORDER**

Through this petition filed under Section 498, Cr.P.C. the petitioner, Ranjha seeks pre-arrest bail in FIR No. 176/2015 dated 27.01.2015 for offence under Section 322, PPC (since deleted) Section 320, PPC registered at Police Station Factory Area District Lahore.

2. No one has entered appearance on behalf of the complainant inspite of being informed about the fixation of the case by the police official present in Court.

3. Arguments have been heard and the record

4. On 21.04.2015 Section 322, PPC was deleted and the petitioner now stands charged only under Section 320, PPC which is bailable. As the petitioner has been charged with an offence which is bailable he would be



entitled to grant of bail in terms of law laid down in *Allah Bachaya & 3 others vs. The State* 2001 PCrLJ 1082 and *Muhammad Jehangir vs. State* PLJ 2009 Cr.C. (Lahore) 1046. The petitioner has not been named in the FIR and was subsequently implicated with the commission of offence by the complainant while getting his supplementary statement recorded. According to the complainant he was informed by his uncle that the offence has been committed by the petitioner, however, he failed to state as to how and from whom his uncle found out that the offence infact was committed by the petitioner and none else. There is nothing on the record to establish that the petitioner has any criminal antecedents. It has vehemently been asserted by the learned counsel for the petitioner that the FIR has been lodged by the complainant against the petitioner with *mala fide* intention and ulterior motives.

5. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier allowed to the petitioner *vide* order dated 15.04.2015 stands confirmed subject to furnishing bail bonds in the sum of Rs. 2,00,000/- (Rupees two hundred thousand) with one surety in the like amount to the satisfaction of the learned trial Court.

(R.A.) Bail confirmed









**2017 C L C Note 46**

**[Lahore]**

**Before Muhammad Yawar Ali, J**

**DANIYAL AZIZ---Petitioner**

**Versus**

**MUHAMMAD TARIQ ANIS and others---Respondents**

Election Petition No.299 of 2008, decided on 1st April, 2015.

**(a) Administration of justice---**

----If law requires a particular thing to be done in a particular manner, it had to be done accordingly; otherwise, it would amount to non-compliance of legislative intent and would carry penal consequences. [Para. 10 of the judgment]

Zia ur Rehman v. Syed Ahmed Hussain and others 2014 SCMR 1015 rel.

**(b) Representation of the People Act (LXXXV of 1976)---**

----S. 63---Election petition---Non-joinder of necessary party only leads to dismissal of Election petition as envisaged by S. 63 of Representation of the People Act, 1976. [Para. 11 of the judgment]

**(c) Representation of the People Act (LXXXV of 1976)---**

----Ss. 52, 54(a), 63 & 68---Election petition---Corrupt or illegal practices---Proof---Non-joinder of necessary party---Effect---Petitioner assailed election of returned candidate on the plea that corrupt and illegal practice was committed by respondent---Objection raised by respondent was that petitioner did not implead other candidates as respondents to election petition---Validity---Even if any corrupt or illegal practice had been committed and if Election Tribunal was satisfied that it was not committed by or with consent or connivance of that candidate or his election agent, the election of returned candidate could not be declared to be void---Petitioner failed to prove beyond reasonable doubt that returned candidate or any of his election agent committed any corrupt or illegal practice and another contesting candidate was not

impleaded as a respondent in gross violation of S.54(a) of Representation of the People Act, 1976---High Court declined to interfere in election result---Petition was dismissed, in circumstances. [Paras. 13 & 14 of the judgment]

Habibul Wahab Alkhairi v. Sheikh Rashid Ahmad and 5 others PLD 1989 SC 760 ref.

Naeem Hussain Chattha v. Tawakkal Ullah and another 1997 CLC 192 and Engineer Jameel Ahmad Malik v. Ghulam Sarwar Khan and 6 others 2004 CLC 914 rel.

Zahid Sultan Khan Minhas for Petitioner.

Najeeb Faisal Chaudhary and Ch. Zaheer Ahmad for Respondents.

Date of hearing: 1st April, 2015.

## **JUDGMENT**

**MUHAMMAD YAWAR ALI J.**---The petitioner Daniyal Aziz contested General Elections held in the year 2008 as a candidate for the National Assembly of Pakistan Constituency NA-116-Narowal-II. The Election Commission of Pakistan vide Notification No.F.2(4)/2008-Cord. Dated 1st March 2008 notified respondent No.1 Muhammad Tariq Anis as a returned candidate to the National Assembly of Pakistan. The petitioner being aggrieved filed an Election Petition dated 14.04.2008 under section 52 of the Representation of the People Act, 1976 wherein it was prayed as follows:-

"It is therefore, most respectfully prayed that the impugned notification dated March 1st 2008 issued by the Election Commission of Pakistan may very kindly be set aside and poll of NA-116 may kindly be declared as void in the supreme interest of justice.

It is further prayed that this petition may kindly be accepted by declaring Respondent No.1 being ineligible rather disqualified as a member of the National Assembly."

2. Respondents Nos.2 and 3 were proceeded against ex parte on 04.06.2008 and no one has entered appearance on their behalf till date as a result thereof this Election Petition was only contested by respondent No.1 Muhammad Tariq Anis.

3. It is common ground that the members of the National Assembly of Pakistan who were elected in the General Elections held in the year 2008 have completed their term. Both the parties agree that even if this petition is accepted fresh elections cannot be held so as to inure for the benefit of the petitioner.

4. The learned counsel for the contesting/respondent Muhammad Tariq Anis has urged with all the vehemence at his command that this petition has become infructuous and is liable to be dismissed on this ground alone. The learned counsel for the respondent while addressing arguments submitted that the Assembly which was elected in the year 2008 had outlived its life hence no live issue is left for this court to adjudicate upon. The learned counsel for the petitioner, on the other hand, has filed an application bearing Civil Misc. No.1/2015 in Election Petition No.229 of 2008 under sections 64, 100 of the Representation of the People Act 1976 read with Order VI, Rule 17 and section 151, C.P.C. and taken a strong exception to this argument by submitting that the matter is still alive and this court would not abstain in giving its own finding and deciding the Election Petition in accordance with law on the sole ground that the Assembly had outlived its life and that it was no more possible for the petitioner to be declared as a returned candidate.

5. The learned counsel for the contesting respondent has raised another objection with regard to the maintainability of this Election Petition by submitting that this Election Petition also fails on the ground that a contesting candidate namely Surraya Asghar Ali Chaudhary has not been impleaded as a party in this Election Petition.

6. The objection raised by the learned counsel for the contesting respondent Muhammad Tariq Anis that this Election Petition has



become infructuous does not carry any weight. It is trite that this Court would not become functus officio and an Election Petition filed under section 52 of the Representation of the People Act, 1976 would not abate where the Assembly has run its full term, where there is a direct allegation that the returned candidate has indulged in corrupt and illegal practices by being privy to firing with automatic weapons in the polling stations, illegal removal of ballot boxes at gunpoint, kidnapping of the polling staff, obstructing the voters from reaching the polling station and illegal stamping of validly issued ballot papers. An illuminating judgment delivered by the august Supreme Court of Pakistan titled Habibul Wahab Alkhairi v. Sheikh Rashid Ahmad and 5 others (PLD 1989 Supreme Court 760) can be read with considerable advantage. The Apex Court while dealing with the issue in hand held as follows:-

"Thus, despite the dissolution of the Assembly, the Election Tribunal can still inquire into the question whether a person has committed a corrupt or illegal practice for that will have a bearing on his competency to participate in a future election or elections."

Following the ratio of the judgment referred to above if this Court comes to the conclusion that the contesting respondent Muhammad Tariq Anis had in fact indulged in the mal-practices as alleged by the learned counsel for the petitioner he could be disqualified from taking part in Elections to be held in the future. The upshot of the above discussion is that this Election Petition cannot forthwith be dismissed on the sole ground that the term of the National Assembly of Pakistan has expired. Civil Misc. No.1/2015 in Election Petition No.229 of 2008 stands disposed of in view of the finding recorded above.

7. The second objection raised by the learned counsel for the contesting respondent Muhammad Tariq Anis is required to be dealt with at some length. On 20.02.2008 the Returning Officer signed the RESULT OF THE COUNT which is as follows:-

## RESULT OF THE COUNT

Election to the National Assembly

From.....NA-116-NAROWAL-II

<b>Sr. No.</b>	<b>Name of contesting candidates</b>	<b>Number of valid votes polled</b>
1.	2.	3.
1	Surraya Asghar Ali Chaudhary	193
2	Ch. Muhammad Tariq Anees	45097
3	Daniyal Aziz	37138
4	Dr. Hafiz Shabbir Ahmed	22369
5.	Gulzar Ahmed Chaudhary	9553

From the document referred to above it is clear that while the petitioner polled 37138 votes, the contesting respondent Ch. Muhammad Tariq Anis won after getting 45097 votes and the candidate Surraya Asghar Ali Chaudhary managed to secure 193 votes. The learned counsel for the petitioner has argued that Surraya Asghar Ali Chaudhary never contested the Elections as the contesting respondent Muhammad Tariq Anis while appearing as RW-26 himself stated that "Madam Surraya Asghar had retired from the Elections." The statement made by the contesting respondent Muhammad Tariq Anis referred to above is actually not correct as RESULT OF THE COUNT signed by the Returning Officer dated 20.02.2008 clearly shows that Surraya Asghar Ali Chaudhary was a candidate of National Assembly NA-116-Narowal-II and managed to secure 193 votes. It is trite that a presumption of correctness is attached to an official document. It is not the case of the

petitioner that the RESULT OF THE COUNT signed by the Returning Officer dated 20.02.2008 which is on the record is a forged or a fabricated document.

The procedure of withdrawal of a candidate from the Election has been clearly laid down in Section 16 of the Representation of the People Act 1976 which is reproduced below:-

Withdrawal.-(1) Any validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or through an advocate duly authorized in writing by him, withdraw his candidature.

Explanation.-Authorisation in favour of an advocate shall be attested by a competent authority, such as, Oath Commissioner or a Notary appointed under the Notaries Ordinance 1961 (XIX of 1961).

(2) A notice of withdrawal under subsection (1) shall, in no circumstances, be open to recall or cancellation.

(3) On receiving a notice of withdrawal under subsection (1) the Returning Officer shall if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at a conspicuous place in his office.

(4) The Returning Officer shall, (on) the withdrawal day, prepare and publish in the prescribed manner a list of contesting candidates which shall, if there are more than one contesting candidates, indicate their respective symbols and supply a copy of the list to each of them."

The candidate Surraya Asghar Ali Chaudhary could only have withdrawn from the Election by issuing a notice in writing signed and delivered by her to the Returning Officer on or before the withdrawal date either herself or through her Advocate duly authorized by her as has been provided in section 16 of the Representation of the People Act, 1976. The learned counsel for the petitioner has not pointed out to any

notice in writing issued either by the candidate Surraya Asghar Ali Chaudhary or her duly authorized counsel seeking her withdrawal as a candidate which was delivered to the Returning Officer on or before the withdrawal date. In any case RESULT OF THE COUNT dated 20.02.2008 signed by the Returning Officer is ample proof of the fact that Surraya Asghar Ali Chaudhary did not withdraw in time and managed to secure 193, votes. Any assertion to the contrary by the contesting respondent or by anyone else would be of no value in face of the document signed by the Returning Officer which depicts that Surraya Asghar Ali Chaudhary as a contesting candidate who polled 193 votes.

8. The petitioner while filing his Election Petition had no option but to join as respondents all the contesting candidates as is evident from a bare reading of section 54(a) of the Representation of the People Act 1976. The language of section 54(a) of the Representation of the People Act 1976 is very clear and does not admit to any ambiguity. It reads as follows:-

"54. Parties to the petition.- The petitioner shall join as respondents to his election petition-

(a) all contesting candidates; and

(b) any other candidate against whom any allegation of any corrupt or illegal practice is made and shall serve personally or by registered post on each such respondent a copy of the petition."

The definition of a contesting candidate has been provided in section 2(viii) of the Representation of the People Act 1976 and reads as follows:-  
2(viii) "contesting candidate" means a validly nominated candidate who has not withdrawn his candidature.

9. In the instant case there can be no cavil to the fact that Surraya Asghar Ali Chaudhary had not withdrawn her candidature prior to the holding of the Elections. In the case of Naeem Hussain Chattha v. Tawakkal, Ullah and another (1997 CLC 192) it was held that a candidate who had not withdrawn his candidature and had secured a

few hundred votes during the Elections which were held was for all intents and purposes a contesting candidate and thus a necessary party to the Election Petition. The view taken by the Election Tribunal in the case referred to above was fortified in the case of Engineer Jameel Ahmad Malik v. Ghulam Sarwar Khan and 6 others (2004 CLC 914) (Election Tribunal, Punjab). The learned Tribunal held in clear and unequivocal terms that where one of the contesting candidates was not impleaded as a respondent in the Election Petition, section 54(a) of the Representation of the People Act 1976 was violated which would necessarily entail the dismissal of the petition.

10. The judgments referred to above are in consonance with the law. If law requires a particular thing to be done in a particular manner it had to be done accordingly otherwise it would amount to non-compliance of the legislative intent and would carry penal consequences as has been held by the august Supreme Court of Pakistan in Zia ur Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015).

11. While agreeing with the ratio of the law laid down in Naeem Hussain Chattha v. Tawakkal Ullah and another (1997 CLC 192), Engineer Jameel Ahmad Malik v. Ghulam Sarwar Khan and 6 others (2004 CLC 914) (Election Tribunal, Punjab) and Zia ur Rehman v. Syed Ahmed Hussain and others (2014 SCMR 1015) and taking into consideration the full import and ramification of section 54(a) read with section 2(viii) of the Representation of the People Act 1976 I have no option but to conclude that non-joinder of a necessary party Surraya Asghar Ali Chaudhary in this case as a respondent would only lead to the dismissal of the Election Petition as envisaged by Section 63 of the Representation of the People Act 1976.

12. The petitioner has prayed for the setting aside of the impugned Notification dated 1st March 2008 issued by the Election Commission of Pakistan whereby the contesting respondent Muhammad Tariq Anis was declared as a returned candidate of NA-116-Narowal-II on the ground

that the contesting respondent Muhammad Tariq Anis, his followers, supporters and cronies resorted to firing with automatic weapons at the polling stations, illegally removed ballot boxes at gunpoint, kidnapped some of the polling staff, obstructed the voters from reaching the polling station and by so doing violated the provisions of the Representation of the People Act 1976 and the law of the land. The learned counsel for the petitioner has referred to an order dated 23.02.2008 passed by the Returning Officer NA-116-Narowal-II wherein he submitted a report to the Chief Election Commissioner of Pakistan stating therein that official Notification of the returned candidates, NA-116- Narowal-II and some other candidates may not be issued as the returned candidates were prima facie guilty of having committed corrupt and illegal practices and violating the law. The petitioner Daniyal Aziz filed an application under Section 103AA of the Representation of the People Act 1976 for declaring the poll of the constituency NA-116-Narowal-II void on the ground that numerous offences were committed by the returned candidate. The application was rejected by the Election Commission of Pakistan after holding that "the allegations made therein are not supported by the facts apparent on the face of the record....." The petitioner including himself produced as many as 15 witnesses PW-1 Hafiz Basharat Ali son of Sain Ditta opted not to record his statement but tendered in evidence his affidavit highlighting various acts of malpractices attributed to the contesting respondent. The affidavit Ex.P.1 although attested by one Ch. Naveed Akhtar, Oath Commissioner, Shakargarh (Narowal) does not bear any date of attestation. Similar is the case of the prosecution witnesses PW-2 Haji Muhammad Sarwar son of Laal Din, PW-3, Zubair Alam son of Muhammad Alam, PW-4, Muhammad Ashfaq, Advocate son of Muhammad Iqbal, PW-7, Muhammad Javed son of Muhammad Din, PW-12, Abdul Raheem son of Bashir Ahmad, PW-13, Tanvir Ahmad son of Gulzar Ahmad, PW-14, Muhammad Hayat son of Ameer Ahmad as they also opted not to lead evidence and tendered in evidence their

affidavits all of which did not bear any date of attestation. The possibility of the affidavits referred to above being concocted and prepared at some later unknown date cannot be ruled out. The other witnesses who appeared on behalf of the petitioner vehemently contended that the followers of the contesting respondent Muhammad Tariq Anis resorted to firing, snatching of ballot papers and causing injuries to the supporters of the petitioner in respect of which certain criminal cases were registered. The learned counsel for the petitioner has not been able to point out as to whether any of the FIRs which were statedly registered against the supporters of the contesting respondent Muhammad Tariq Anis culminated in a conviction. Indeed very strong and cogent evidence is needed to de-seat a returned candidate. PW-11, Muhammad Hussain Anjum, Senior School Teacher, Government High School, Sukhu Chak, Tehsil Shakargarh District Narowal stated that a number of armed persons reached at the polling station, broke the seals of the ballot boxes and also took away the ballot papers and that later another armed group of unknown people arrived there and on their query he told them all that had happened. While being cross-examined the witness candidly conceded that the petitioner Daniyal Aziz secured 350 votes while the contesting respondent Muhammad Tariq Anis managed to get only 30 votes from that polling station. The petitioner, Daniyal Aziz, PW-15 while being cross-examined stated as follows:-

"It is correct that after the elections that I had submitted an application to the Chief Election Commissioner, but I do not remember the exact date of the said application. It is correct that the said application had been filed against as many as 10 persons while the present petition has been filed against three contesting candidates. I do not recall whether one Surayya Asghar Chaudhry was also a candidate from this constituency. It is correct that Surayya Asghar has not been impleaded as a respondent in this Election Petition..... It is correct that in para No.3 of my petition I have not mentioned either

the names of any persons/miscreants who were with respondent No.1 on the Election Day nor I have mentioned therein the numbers of vehicles."

An assertion made in the Election Petition that Muhammad Saleem had been beaten to death by Rana Irshad (a strong man) of the contesting respondent Muhammad Tariq Anis was negated by the petitioner who while being cross-examined stated as follows:-

"It is correct that in the FIR mentioned in para No.5 of the petition i.e. FIR No.21/2008 of P.S.Kot Nainan, respondent No.1 was not one of the accused."

13. It is trite that in terms of section 68 of the Representation of the People Act 1976 even if any corrupt or illegal practice has been committed and if the Tribunal is satisfied that it was not committed by or with the consent or connivance of that candidate or his election agent, the Election of the returned candidate cannot be declared to be void. As the petitioner has not been able to prove beyond reasonable doubt that the contesting respondent Muhammad Tariq Anis or any of his election agents committed any corrupt or illegal practice and a contesting candidate Surraya Asghar Ali Chaudhary was not impleaded as a respondent in gross violation of section 54(a) of the Representation of the People Act, 1976, the petitioner is not entitled to the relief being sought.

14. For what has been stated above, this petition being without any merit fails and stands dismissed.

MH/D-1/L Petition dismissed.



**PLJ 2017 Cr.C. (Lahore) 72**  
**Present: MUHAMMAD YAWAR ALI, J.**  
**HAMID MEHMOOD--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 3909-B of 2016, decided on 2.5.2016.

**Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497(2)--Pakistan Penal Code, (XLV of 1860), S. 302--Bail after arrest--Grant of--Further inquiry--Two girls were murdered by unknown persons--No plausible explanation by witnesses-- Prosecution failed to explain as to how prosecution witnesses came to know that deceased were daughters of complainant--Prosecution witness while appearing as PW stated that accused had fired at towards him and PW--Prosecution witness while deposing before trial Court also stated that I.O. had obtained his signature on a blank piece of paper--Statement recorded by prosecution witnesses while appearing before trial Court is not in line with prosecution case--All these factors would bring case of petitioner within ambit of further inquiry calling into his guilt meaning thereby he would be entitled to grant of bail--Petitioner was arrested, more than two years have gone by but trial has not been concluded--There is nothing on record to establish that petitioner has any criminal antecedents--Bail was allowed. [P. 73] A, B & C

2012 SCMR 1137, *ref.*

*Mr. Muhammad Akram Ch.* Advocate for Petitioner.

*Mr. Sarfraz Ahmed Khatana*, DDPP for State.

*Mr. Muhammad Jameel Rana*, Advocate for Complainant.

Date of hearing: 2.5.2016.

**ORDER**

Through this petition filed under Section 497, Cr.P.C. the petitioner Hamid Mehmood seeks post-arrest bail in FIR No. 585/2013, dated

26.9.2013 for offence under Section 302, PPC registered at Police Station Noshehra & Virkan, District Gujranwala.

2. Arguments have been heard and the record perused.

3. According to the FIR on 26.9.2013 at around 02:00 p.m. the complainant heard fire shots, went to the place of occurrence and saw two young girls lying dead in a pool of blood. As per the complainant two girls who were not known to him had been murdered by some unknown person. The father of the deceased girls Shabbir Ahmad while getting his statement recorded stated that Tariq Javed and Safdar Hussain informed him on 3.10.2013 that his daughters had been fired at and killed by the petitioner. No plausible explanation is forthcoming as to why Tariq Javed and Safdar Hussain who have stated to have witnessed the occurrence on 26.9.2013 at 02:00 p.m. kept quiet and did not inform the father of the deceased girls till 3.10.2013. The learned Deputy District Public Prosecutor failed to explain as to how the prosecution witnesses Tariq Javed and Safdar Hussain came to know that the deceased were the daughters of Shabbir Ahmad. The prosecution witness Tariq Javed while appearing as PW7 stated that the accused had fired at towards him and Safdar Hussain. The prosecution witness Tariq Javed while deposing before the trial Court also stated that the Investigating Officer had obtained his signature on a blank piece of paper. The statement recorded by the prosecution witnesses Tariq Javed and Safdar Hussain while appearing before the trial Court is not in line with the prosecution case. All these factors would bring the case of the petitioner within the ambit of further inquiry calling into his guilt meaning thereby he would be entitled to the grant of bail in terms of law laid down by the august Supreme Court of Pakistan in *Ehsan Ullah Versus The State* (2012 SCMR 1137). The petitioner was arrested on 6.11.2013, more than two years have gone by but the trial has not been concluded. There is nothing on the record to establish that the petitioner has any criminal antecedents.

4. For what has been stated above, this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- (rupees two hundred thousand only) with two sureties in the like amount to the satisfaction of the learned trial Court.

(A.A.K.)

Bail accepted.

**PLJ 2018 Cr.C. (Lahore) 44 (DB)**

**[Multan Bench Multan]**

**Present: MUHAMMAD YAWAR ALI AND MUHAMMAD TARIQ ABBASI, JJ.**

**SHAMEER HUSSAIN @ LAAL--Petitioner**

**versus**

**STATE and another—Respondents**

CrI. Misc. No. 7014-B of 2014, decided on 21.1.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Control of Narcotic Substances Act, (XXV of 1997), S. 9(c)--Bail after arrest--Grant of--Allegation of--Possessor of narcotics--Whereby complainant after keeping narcotic with him for about 12-days had produced it in police station, with above mentioned contention seems dubious--When complainant was possessor of narcotic then he was also required to be questioned but police failed to take any notice of it--Complainant remained involved in so many narcotic cases, registered against him at Police Station--Possibility of false involvement of petitioner to achieve some ulterior motive could not be ruled out--Case of petitioner is fit one for grant of bail, within meaning of Section 51 of act ibid--Petitioner is behind bars, he is no more required for any further investigation in this case and does not have any previous criminal antecedent--Bail was allowed. [P. 45] A & B

*Syed Jaffar Tayyar Bukhari*, Advocate for Petitioner.

*Mr. Hassan Mehmood Khan Tareen*, DPG for State.

Date of hearing: 21.1.2015.

**ORDER**

Through this petition, Shameer Hussain *alias* Lal, petitioner seeks post arrest bail in case FIR No. 411, dated 23.10.2014, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 at Police Station Qureshi, District Muzaffargarh.

2. The precise facts are that on 23.10.2014 Mazhar Hussain complainant, alongwith his brothers Sajjad Hussain and Aslam PWs attended the Police Station with *chars* weighing 1060 grams, with the contention that it was concealed by the petitioner in his house, in a heap of chaff.

3. Arguments heard. Record perused.

4. As per FIR, the petitioner had concealed the narcotic, in house of the complainant, in a heap of chaff during the night between 11/12.10.2014 but he produced it in the Police Station on 23.10.2014. The above mentioned story whereby the complainant after keeping the narcotic with him for about 12-days had produced it in the police station, with the above mentioned contention seems dubious. When the complainant was possessor of the narcotic then he was also required to be questioned but the police failed to take any notice of it. It has been observed that the complainant remained involved in so many narcotic cases, registered against him at Police Station Qureshi, District Muzaffargarh. Possibility of false involvement of the petitioner to achieve some ulterior motive could not be ruled out.

5. The above mentioned facts and circumstances, in our view, have made the case of the petitioner a fit one for grant of bail, within the meaning of Section 51 of the act *ibid*. The petitioner is behind the bars, he is no more required for any further investigation in this case and does not have any previous criminal antecedent.

6. Resultantly, the instant petition is accepted and the petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (rupees two lac only) with two sureties each, in the like amount to the satisfaction of the learned trial Court.

(A.A.K.)

Bail allowed.