

Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ

IFTIKHAR AHMAD---Petitioner

Versus

The STATE---Respondent

Criminal Petition No. 529 of 2021, decided on 14th July, 2021.

(Against the order of Lahore High Court, Lahore dated 19.04.2021, passed in Criminal Miscellaneous No. 5350-B of 2021).

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

----S. 497(1)---Bail, grant of---Offences not falling within prohibitory clause of S.497(1), Cr.P.C.---Grant of bail in such offences was a rule and refusal thereof an exception.

Tariq Bashir v. State PLD 1995 SC 34; Imtiaz Ahmad v. State PLD 1997 SC 545; Subhan Khan v. State 2002 SCMR 1797; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 and Muhammad Tanveer v. State PLD 2017 SC 733 ref.

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

----S. 497(1)---Post-arrest bail---Offences not falling within prohibitory clause of S.497(1), Cr.P.C.---Principles relating to post-arrest bail in offences not falling within prohibitory clause of S.497(1), Cr.P.C. stated.

The main purpose of keeping an under-trial accused in detention was to secure his attendance at the trial so that the trial was conducted and concluded expeditiously or to protect and safeguard the society, if there was an apprehension of repetition of offence or commission of any other untoward act by the accused. Therefore, in order to make the case of an accused person fall under the exception to the rule of grant of bail in offences not covered by the prohibitory clause of section 497(1) Cr.P.C., the prosecution had to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person was released on bail. Some of the circumstances or conduct of the accused person that may bring his case under the exceptions to the rule of granting bail included the likelihood of: (a) his abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he had prima facie acted in the commission of offence alleged. A court which dealt with an application for grant of bail in an offence not falling within the prohibitory clause of section 497(1), Cr.P.C. must apply its judicious mind to the facts and circumstances of the case and to the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offence only when it found any of the noted circumstances or some other striking circumstance that impinged on the proceedings of the trial or posed a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above were not exhaustive and the facts and circumstances of each case were to be evaluated for application of the said principle.

Tariq Bashir v. State PLD 1995 SC 34; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 and Muhammad Tanveer v. State PLD 2017 SC 733 ref.

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

----S. 497---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---Bail, grant of---Offences not falling within prohibitory clause of S.497(1), Cr.P.C.---Courts below had not mentioned any circumstance that may bring the case of the accused under the exception of declining bail in offences not falling within the prohibitory clause of S.497(1), Cr.P.C. nor the counsel for State or complainant could show any such circumstance or conduct of the accused that would bring his case under exception to the rule of granting bail in such offences---Petition for leave to appeal was converted into appeal and allowed, and accused was granted bail.

Rana Muhammad Zahid, Advocate Supreme Court for Petitioner.

Mirza Usman, DPG for the State.

Syed Farhad Ali Shah, Advocate Supreme Court for the Complainant.

Date of hearing: 14th July, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---Petitioner seeks leave to appeal against the order dated 19.04.2021, passed by the Lahore High Court, whereby post arrest bail was denied to him in case FIR No.789 dated 22.6.2020, registered at Police Station Batapur, district Lahore, for offences under Sections 420, 468 and 471, P.P.C.

2. The case set out in the crime report (FIR), briefly stated, is that the complainant had rented out a property (a hospital building) to the petitioner, who while being a tenant prepared a forged sale deed of the property in his favour and started claiming to be the owner of the said property.

3. What concerns us, in the present case, is that the courts below have not exercised their discretion while declining bail to the petitioner, under subsection (1) of section 497, Cr.P.C., in accordance with the principle of law enunciated by this Court regarding grant of bail in offences not falling within the prohibitory clause of that subsection. They have viewed the case against the petitioner under subsection (2) of section 497, Cr.P.C. and simply relied, for declining bail, on the incriminating material available on the record to connect the petitioner with the commission of the offences alleged. All the offences alleged against the petitioner do not fall within the prohibitory clause of subsection (1) of section 497, Cr.P.C. and thus attract the principle that grant of bail in such offences is a rule and refusal an exception as authoritatively enunciated by this Court in several cases.¹

4. The main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society, if there is an apprehension of repetition of offence or commission of any other untoward act by the accused. Therefore, in order to make the case of an accused person fall under the exception to the rule of grant of bail in offences not covered by the prohibitory clause of section 497(1), Cr.P.C., the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail. This Court in the cases of Tariq Bashir,² Zafar Iqbal³ and Muhammad Tanveer⁴ has time and again illustrated such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail.⁵ They include the likelihood of: (a) his abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. A court which deals with an application for grant of bail in an offence not falling within the prohibitory clause of section 497(1), Cr.P.C. must apply its judicious mind to the facts and circumstances of the case and to the conduct of the accused person, and decline to exercise the discretion of granting bail to him in such offence only when it finds any of the above noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle. This Court has already cautioned the courts below in Muhammad Tanveer case ⁶, on not following the said principle, in the following terms:

Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception, then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding [under Article 189] on all Courts throughout the country including the Special Tribunals and Special Courts.

5. In the present case, neither the courts below, including the learned High Court, have mentioned any circumstance that may bring the case of the petitioner under the exception of declining bail in offences not falling within the prohibitory clause of section 497(1), Cr.P.C. nor the learned counsel for the State and

the learned counsel for the complainant could show us any such circumstance or conduct of the petitioner that would bring the case of the petitioner under exception to the rule of granting bail in such offences. The courts below, including the learned High Court, have failed to adhere to the principle of law enunciated by this Court for exercise of discretion to grant bail in offences not falling within the prohibitory clause of section 497(1), Cr.P.C. The impugned order passed by the learned High Court is thus not sustainable under the law and calls for interference by this Court. The petition is, therefore, converted into appeal and allowed: the impugned order is set aside and the application of the petitioner for grant of post arrest bail is accepted. Resultantly, the petitioner is admitted to post-arrest bail subject to his furnishing bail bond in the sum of Rs.500,000/- with two sureties in the like amount to the satisfaction of the trial court.

6. Needless to say that the observations made in this order are of tentative nature and shall not influence the trial court while concluding the case. The learned trial court is to expeditiously proceed with the trial in accordance with law, and in case of abuse or misuse of the concession of bail by the petitioner, including causing delay in conclusion of the trial, the prosecution may approach the competent court for cancellation of bail under section 497(5), Cr.P.C.

MWA/I-8/SC Bail granted.

¹ See Tariq Bashir v. State PLD 1995 SC 34; Imtiaz Ahmad v. State PLD 1997 SC 545; Subhan Khan v. State 2002 SCMR 1797; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 and Muhammad Tanveer v. State PLD 2017 SC 733.

² Tariq Bashir v. State PLD 1995 SC 34 (2-MB).

³ Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488 (4-MB).

⁴ Muhammad Tanveer v. State PLD 2017 SC 733 (3-MB).

⁵ See cases *ibid*.

⁶ Muhammad Tanveer v. State PLD 2017 SC 733.