

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

*Ch. Muhammad Ibrahim Zia, J.*

*Raja Saeed Akram Khan, J.*

Criminal Revision No. 01 of 2017

(PLA filed on 9.1.2017)

1. Hassan Mehmood s/o Muhammad Sharif, overseas Department, Mirpur Development Authority, Mirpur.
2. Zafar ul Lodhi s/o Abdul Majeed, Town Planner Development, Mirpur Development Authority, presently in judicial lock-up Central Jail, Mirpur.

....APPELLANTS

**VERSUS**

Ehtesab Bureau through Chief Prosecutor/Deputy Chief Prosecutor, Mirpur.

..... RESPONDENT

(On appeal from the judgment of the High Court dated 27.12.2016 in application No. 258 of 2016)

-----

FOR THE APPELLANTS: Ch. Muhammad Ashraf Ayaz, Advocate.

FOR THE RESPONDENT: Mr. Zaffar Iqbal Azad, Deputy Chief Prosecutor, Ehtesab Bureau.

*Date of hearing:* 12.1.2017.

**Judgment:**

**Raja Saeed Akram Khan, J.**— By our short order announced on 12.1.2017, this case was disposed of in the following manner:—

“Arguments heard. The details shall follow. While accepting this appeal the appellants are released on bail in the instant case (under investigation) relating to the offences under sections 34, 161, 162, 467, 468 APC and 10, 11 of Ehtesab Bureau Act, 2001 subject to the condition of furnishing by each of them personal bond of one million rupees and two sureties of same amount to the satisfaction of any judicial Magistrate, Mirpur. They shall be released immediately, if not required in any other case

There are also general public complaints regarding the allotments of plots by Mirpur Development Authority to the officials of Ehtesab Bureau. It prima facie appears to be

misuse of law and powers. The Director General, Mirpur Development Authority is directed to submit a list of all the officials of the Ehtesab Bureau who have been allotted plots since the establishment of Ehtesab Bureau. The report shall be submitted before 21<sup>st</sup> Instant before the Additional Registrar, Mirpur who shall place the same before the Court during tour of Mirpur.”

In support of the above short order dated 12.1.2017, the detailed reasons are as under:—

2. This appeal by leave of the Court has been directed against the judgment passed by the High Court on 27.12.2016, whereby the application filed by the appellants, herein, for grant of bail, has been rejected.

3. The necessary facts giving rise to this appeal are that on the report of one, *Iftikhar Mir*, complainant, the Ehtesab Bureau

apprehended the accused-appellants on 22.11.2016, in the offences under sections 161, 162, 467, 468 and 34, APC read with sections 10 & 11 of the Ehtesab Bureau, Act, 2001. The accused-appellants along with some other accused filed an application after arrest before the Judge Ehtesab Court Mirpur on 28.11.2016 for their release on bail. The learned Ehtesab Court, Mirpur declined the bail application to the extent of the accused-appellants. Feeling aggrieved, the accused filed second bail application before the learned High Court, which was also rejected with the direction to the respondents to file reference within a period of two months and after filing the same the accused may apply for bail on fresh grounds. Hence, this appeal by leave of the Court.

4. Ch. Muhammad Ashraf Ayaz, Advocate, the learned counsel for the accused-appellants, argued that the learned High Court failed to

exercise the discretion in a legal manner which is against the settled principle of law. He argued that the case of the accused-appellants is at par with the co-accused, namely, Javed Iqbal, to whom the concession of bail has been granted by the learned Ehtesab Court, Mirpur, therefore, the principle of consistency is applicable in this case. He contended that the Ehtesab Bureau failed to collect any sort of evidence against the accused in support of the allegations levelled against them. He further contended that the offence for which the accused have been charged with does not fall under the prohibitory clause of section 497, Cr.P.C, therefore, they are entitled to be released on bail. In such like case, the bail is rule and refusal is exception but this golden principle of law has not been taken into consideration by the learned High Court while delivering the impugned judgment. During the investigation, not a single witness has been

produced in support of the allegations levelled against the accused and only a forged compact disk (C.D), has been made part of the record which was sent to the Forensic Science Laboratory for analysis but the lab shown its inability to submit the report on the ground that it has no such equipments to check the veracity of C.D., which makes the case one of further inquiry. He further submitted that the offences for which the accused were charged with, are bailable and sections 10 & 11 of Ehtesab Bureau Act, 2001, are not attracted in the case in hand. The whole proceedings have been conducted with malafide intention as is apparent from the mode of investigation. The learned counsel argued that the accused are behind the bars since their arrest and no more required for further investigation, therefore, no useful purpose will be served by keeping them in jail for an indefinite period. The learned counsel

lastly argued that the co-accused charged with the same allegations has already been released on bail, therefore, the principle of consistency is fully applicable in the case in hand. As the co-accused having attributed the same allegations has been enlarged on bail, therefore, the accused-appellants are also entitled for the same treatment.

5. On the other hand, Mr. Zaffar Iqbal Azad, Advocate, Deputy Chief Prosecutor, for Ehtesab Bureau, has strongly opposed this appeal on the ground that a concrete material against the accused-appellants is available on the record, which connects them in the offence for which they have been charged with. He submitted that the case of the co-accused is not at par with the case of the accused-appellants, therefore, the learned High Court has not committed any illegality while rejecting the bail application filed by the accused. He averred

that no malafide or enmity came on record to falsely implicate the accused with the commission of offence. The learned counsel lastly argued that the accused have intentionally been making the wrong reports in furtherance of their nefarious act to rectify the allegations of bribery and *ill-gotten gains*.

6. We have heard the arguments of the learned counsel for the accused-appellants and the Deputy Chief Prosecutor, Ehtesab Bureau at some length and gone through the record made available. The allegation levelled against the accused is regarding practising fraud and forgery but the only evidence which has been collected by the prosecution agency is C.D and during the course of arguments, it has categorically been admitted that no other evidence could be collected as yet except C.D, the authenticity of which is yet to be determined. After going through the record and



the mode of investigation, we are justified to hold that the investigating officer failed to discharge its duty in a legal manner and tried to create harassment in the garb of complaint for which no evidence has been collected. This Court has already shown serious reservation on the functioning of the Ehtesab Bureau which is one of the most important institutions of the State and it is the paramount duty of the Ehtesab Bureau to eradicate the corruption from the society but the Ehtesab Bureau failed to discharge its duty properly.

7. After the cursory examination of the material available on record, we failed to find out any concrete evidence which may *prima facie* connect the accused with the offence under which they have been charged with. The only evidence, i.e., C.D, which has been collected during the investigation, cannot be considered as solid evidence as the Forensic Science

Laboratory has already shown its inability to submit the report on the ground that no such equipments are available to check the veracity of C.D. Therefore, it cannot be ascertained whether the accused are connect with the offences for which they have been charged with. It is settled principle of law that while dealing with the bail matters, the Court has to confine itself to the allegation levelled in the FIR, statements under section 161, Cr.P.C., the material collected in pursuance of the allegations levelled against the accused and the statements of the witnesses, whereas, in the case in hand, admittedly, no one came forward to record the statement as witness.

8. In the case in hand, the counsel for the accused-appellants laid much stress on the point that the principle of consistency is fully applicable in the case in hand. As the co-accused, namely, Javed Iqbal, has already been

granted the bail after arrest, therefore, the case of the accused-appellants is at par with the case of the co-accused. To appreciate this argument, we have examined the allegations levelled against the accused-appellants and the co-accused. For better appreciation the allegation levelled against the accused-appellants and the co-accused are reproduced here, the allegation levelled against the accused-appellant, Hassan Mehmood, reads as under:—

"1- یہ کہ آپ ادارہ ترقیات میرپور میں بحیثیت اور سیکرٹینٹ ہیں۔ آپ کو بذریعہ ونڈو شعبہ ادارہ ترقیات شاکی افتخار احمد میر کی درخواست بغرض تجویز منظور شدہ نقشہ پلاٹ نمبر 235A/1 سیکٹر D/3 ایسٹ میرپور مورخہ 30.12.2015 پیش ہوئی۔ جس پر آپ نے اولاً غیر ضروری تاخیر کرتے ہوئے مورخہ 11.11.2016 کو درخواست دینے کے تقریباً 12 یوم بعد اپنی رپورٹ اپنے قلمی بحیثیت اور سیکرٹری کی جس میں ثانیاً آپ نے ریکارڈ کے معائنہ شاکی کو زیر بار کرتے ہوئے رشوت وصولی کی غرض سے غلط رپورٹ تحریر کی۔۔۔۔۔"

2- یہ کہ آپ نے مورخہ 11.11.2016 کو پرنٹ شدہ فارم پر اپنے قلمی رپورٹ کرتے ہوئے فارم کے خانہ نمبر 1 اور 2 کو ریکارڈ کے مطابق پر ہی نہ کیا جس سے آپ کی کارسروکار کی انجام دہی میں غفلت مجرمانہ اور بد نتیجہ ظاہر ہوتی ہے۔۔۔۔۔"

3- یہ کہ آپ نے یہ غلط رپورٹ TP ظفر اللہ خان لوڈھی اور ATP جاوید اقبال کی ملی بھگت اور منظم پلاننگ کے ذریعے شاکی سے رشوت وصولی کرنے کی خاطر ریکارڈ کے معائنہ اختیارات کا غلط استعمال کرتے ہوئے تحریر کی ہے۔۔۔۔۔"

The allegation levelled against the accused-appellant, Zafar-ul-Lodhi, reads as under:—

"1- یہ کہ آپ ادارہ ترقیات میرپور میں بحیثیت ٹاؤن پلانر تعینات ہیں۔ بحیثیت ٹاؤن پلانر شعبہ ٹاؤن پلاننگ سے متعلقہ جملہ امور اور اپنے ماتحت سٹاف کو قانون کا پابند بنانا آپ کے فرائض منصبی کے لحاظ سے آپ کی ذمہ داری میں آتا ہے۔ مگر آپ نے شاکی افتخار احمد میر کی درخواست بغرض تجدید منظور شدہ نقشہ پلاٹ نمبر 235A/1 سیکٹر D/3 ایسٹ میرپور مورخہ 30.12.2015 کے معاملہ میں اپنے ماتحت سٹاف سے مل کر ابتدائی سیکٹر پلان میں سڑک مارک نہ ہونے کی باوجود شاکی کی درخواست پر حسن محمود اور سیکر سے مورخہ 11.11.2016 کو خلاف صورت موقعہ و خلاف ریکارڈ غلط رپورٹ کروائی آپ کے فرائض میں اپنے ماتحت کی غلط کام پر سرزنش کرنا ہے نہ کہ اعانت۔ آپ نے اپنے ماتحت کی سرزنش کرنے کی بجائے غلط کام میں اعانت کی۔ آپ نے رپورٹ کو ریکارڈ کے مطابق درست کرنے کی بجائے اپنے ماتحت حسن محمود اور سیکر اور جاوید اقبال ATP کی طرف سے رشوت طلبی کی شاکی کی زبانی شکایت پرائیکشن لینے کی بجائے 20/20 ہزار روپے رشوت کے معاملہ میں مصالحت کرواتے ہوئے ملازمین کو 10/10 ہزار روپے رشوت شاکی سے حاصل کرتے ہوئے دلوائی۔ آپ کا یہ فعل قانوناً قابل مواخذہ ہے، آپ نے اپنے اس غیر قانونی فعل کو صرف اپنے ماتحت ملازمین کو رشوت دلوانے کی حد تک محدود نہ رکھا بلکہ خود بھی منظم پلاننگ کرتے ہوئے بیت مجرمانہ اپنے دیگر ساتھیوں سے منصوبہ بندی کے بعد شاکی کو سرکاری ریکارڈ اختیارات سے متجاوز ہو کر حوالہ کیا۔ آپ کا یہ اقدام شاکی سے رشوت وصولی کر کے ماتحت ملازمین میں تقسیم کرنا اور اپنے لئے بھاری رقم رشوت طلبی کے الزامات کی صداقت کا قوی ثبوت ہے۔ آپ نے جو سرکاری ریکارڈ شاکی کو حوالہ کیا اس ریکارڈ/رپورٹ میں آپ کے بحیثیت ٹاؤن پلانر دستخط موجود ہیں۔ اس رپورٹ میں آپ نے موقعہ کا سیکٹر پلان بمعہ ساز حسن محمود اور سیکر سے تحریری حاصل کرنے کا تحریر کر رکھا ہے۔ آپ نے 14.1.2016 کو یہ تحریر حسن محمود اور سیکر لکھ کر پوری کی جس نے مورخہ 18.1.2016 کو آپ کو یہ ریکارڈ تحریر درج کرتے ہوئے مہیا کیا۔ آپ نے ریکارڈ حاصل کرتے ہوئے شاکی کے پلاٹ پر اسی روز مورخہ 18.1.2016 کو شام کے وقت موقعہ ملاحظہ کیا اور شاکی کو اپنی گفتگو کے ذریعے بھاری رقم بطور رشوت دینے کی بابت آمادہ کرنے کی کوشش کی۔ آپ نے شاکی سے اولاً چھ لاکھ روپے رشوت طلب کی۔ بعد ازاں آپ نے یہ رقم کم کر کے

"5,50,000/- روپے کر دی۔۔۔۔۔"

The allegation levelled against the co-accused, Javed Iqbal, reads as under:—

"یہ کہ آپ ادارہ ترقیات میرپور میں بحیثیت اسٹنٹ ٹاؤن پلانر تعینات ہیں۔ آپ نے شاکی افتخار احمد میرپور کی درخواست بغرض تجدید منگور شدہ نقشہ پلاٹ نمبر 235A/1 سیکٹر D/3 ایسٹ میرپور مورخہ 30.12.2015 پر اور سیزر حسن محمود کی طرف سے مورخہ 11.11.2016 کو کی گئی خلاف صورت موقعہ و خلاف ریکارڈ رپورٹ پر اپنی رپورٹ مورخہ 11.11.2016 کو اسی دن تحریر کرتے ہوئے ریکارڈ کو ملحوظ خاطر رکھنے کی بجائے رپورٹ کی رشتہ ہموال کرنے کے لئے اور سیزر کی خلاف ریکارڈ رپورٹ پر ریکارڈ اور موقع کے مطابق رپورٹ کرنے کی بجائے تحریر کیا کہ آپ کو شاکی کے پلاٹ نمبر 235A/1 کو ایڈجسٹ کرنا تجویز کیا گیا ہے حالانکہ شاکی کی درخواست پلاٹ کی ایڈجسٹمنٹ کے سلسلہ میں تھی۔۔۔۔۔۔۔"

After comparison of the allegations levelled against the accused-appellants and the co-accused, we find substance in the argument addressed by the learned counsel for the accused-appellants that the principle of consistency is fully applicable in the case in hand as the allegations levelled against the co-accused and the accused-appellants are the same in nature, therefore, the accused-appellants are also entitled for the same treatment. Reliance can be placed on a case reported as *Muhammad Ajmal v. Muhammad Naeem and 3 others* [2001 SCR 164], wherein it has been held as under:—

"..... We are of considered opinion that the role attributed to

the appellants Muhammad Siddique and Maqbool Hussain is similar and identical to the role attributed to Muhammad Waheed and Mehmood Hussain. Therefore, the case of appellants Muhammad Siddique and Maqbool Hussain is at par with the case of Muhammad Waheed and Mehmood Hussain. Thus, following the rule of consistency, the appellants Muhammad Siddique and Maqbool Hussain should not have been meted with a discriminatory treatment. Thus, they are also entitled to the concession of bail.”

In another case reported as *Akhtar Hussain & another vs. The State & another* [2010 SCR 455], it has been observed by this Court as under:—

“11. ....In the absence of any evidence, Faisal Iqbal, accused, prima facie, cannot be charged with vicarious liability. The case of Faisal Iqbal is at par with the case of Ansar Iqbal and Tariq Mahmood. No overt act is attributed to all the

three accused towards the deceased and if the other two accused are released on bail, why the concession of bail may not be extended to the accused, Faisal Iqbal, who is facing similar allegations.

9. We are convinced that the case of the accused-appellants is on much better footing than the case of the co-accused who has been granted the bail after arrest. During the course of investigation, Ehtesab Bureau failed to collect any solid evidence against the accused-appellants. In this situation, keeping the accused behind the bars for an indefinite period amounts to conviction without trial which is not permitted under law. Moreover, most of the offences are bailable and the applicability of the provisions of sections 10 & 11 of the Ehtesab Bureau, Act, 2001 will be seen at the trial stage. After taking a bird eye view, we failed to find out any material to keep the accused behind the bars.

Resultantly, this appeal is accepted.  
The impugned judgment passed by the learned  
High Court on 27.12.2016 is hereby set aside.

Muzaffarabad.  
\_\_\_.1.2017.

**JUDGE**

**JUDGE**