

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**BAHAWALPUR BENCH BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

Crl.Misc.No.890-B of 2021

Rafique Ahmed versus The State etc.

S.No.of order/ Proceedings.	Date of order/ Proceedings	Order with signature of judge, and that of parties or counsel, where necessary.
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**16.04.2021**

Syed Zeeshan Haider, Advocate for the petitioner.

Rao Muhammad Riaz Khan, Deputy Prosecutor General with Kashif Muhammad Ali Director ACE, Bahawalpur, Babar Hayat Tarar, Senior Member Board of Revenue, Punjab Lahore, Muzaffar Khan DCO, Bahawalpur.

Rafique Ahmed (petitioner) seeks post-arrest bail in case FIR No.5/2021 dated 05.03.2021 registered under Section 5 (2) of the Prevention of Corruption Act, 1947 read with Section 161 of Pakistan Penal Code, 1860 at Police Station Anti-Corruption Establishment (ACE), Bahawalpur.

2. Succinctly stated the case of prosecution, as it gleans from the crime report, is to the effect that Azhar Ali (first informant) approached *Halqa Patwari*, namely, Rafique Ahmed (petitioner) for the issuance of *Fard Malkiat* (record of rights) for effecting a mutation; that *Halqa Patwari* demanded Rs.50,000/- as illegal gratification, however, later agreed to do the needful in lieu of Rs.30,000/-; that Azhar Ali approached ACE, Bahawalpur and lodged a complaint; that in consequence of the complaint so lodged, a raiding party was constituted under the supervision of a magistrate, who apprehended Rafique Ahmed (petitioner) in the thick of transaction wherein he was receiving Rs.30,000/- from Azhar Ali.

3. Learned counsel for the petitioner submitted that petitioner is innocent and has falsely been dragged in this case due to personal grudge of Azhar Ali; that admittedly neither the magistrate nor any other member of raiding party heard the conversation at the time when Rs.30,000/- were given to the petitioner; that during investigation no documentary evidence came on record from which it could be gathered that any assignment of the first informant was pending before petitioner; that even otherwise, the case does not attract the prohibitory clause of Section 497 Cr.P.C. thus petitioner is entitled to the grant of post-arrest bail.

4. On the other hand, learned law officer came forward with the submissions that officials of ACE have no reason to knit a false case against the petitioner; that the transparency of raid proceedings is evident from the fact that these were supervised by

the magistrate; that the petitioner was caught red handed while receiving illegal gratification, thus he is not entitled to the craved relief.

5. Arguments heard. Record perused.

6. From the perusal of record, it evinces that Rafique Ahmed (petitioner) while serving as *Halqa Patwari* was statedly caught red handed, taking Rs.30,000/- as illegal gratification from Azhar Ali (first informant). The aforesaid amount was acclaimed by Azhar Ali to have been paid as illegal gratification for the issuance of *Fard Malkiat*. The raid proceedings, which culminated into the arrest of petitioner, were supervised by a magistrate.

7. There is no cavil to the proposition that corruption is a menace for any society and as a necessary consequence such cases, by no stretch, can be placed at lower pedestal. So far as, the instant case is concerned, certain aspects are palpable from record, which tend to show that the subject accusation requires further probe. In this regard, firstly, it is noticed that the raid proceedings were carried out on 05.03.2021, whereas mutation No. 3357 had been entered in the name of Sadia Iqbal, the wife of first informant, much before that on 08.01.2021. Even the mutation was sanctioned on 17.02.2021 i.e. approximately 16/17 days prior to the registration of FIR. Nothing as such is available on record from which it may even remotely insinuate that any assignment of the first informant was pending before the petitioner on the day when the instant case was registered. Secondly, it is observed that no member of raiding party heard conversation between the two so as to *prima facie* determine that in lieu of what consideration the amount was being paid. I am not oblivious of the fact that in raid proceedings initiated by ACE, non-hearing of conversation does not inflexibly make an accused entitled to bail. In the instant case, non-hearing of conversation gains importance when seen in the context that on the eventful day no legal assignment of the first informant was pending before the petitioner. In the foregoing circumstances, for the limited purposes of bail, it is opaque that in lieu of what consideration the amount of Rs.30,000/- was being paid to the petitioner. In appropriate cases like the instant one, post-arrest bail can be granted to a public servant when the conversation at the time of passing money is not heard by the raiding Magistrate. If any reference in this regard is needed that can be made to the cases reported as *Bashir Ahmad v. The State* (2001 SCMR 634), *Dr. Iftikhar Ahmed Seehar v. The State* (2014 YLR 1385), *Muhammad Suleman v. The State* (2013 PCr.LJ 1051) and *Imtiaz Ali v. The State* (2017 MLD 146). Thirdly, it divulges from record that application for deputing a Magistrate to supervise raid proceedings was moved before learned Sessions Judge on 04.03.2021, whereas the application of first informant was received by ACE on 05.03.2021. Regarding this anomaly, no satisfactory explanation is available on

record. Fourthly, it is observed that the case stands registered under Section 5 of the Prevention of Corruption Act, 1947 and under Section 161 of Pakistan Penal Code, 1860. Both the foregoing provisions, entail punishment of less than ten years imprisonment, thus do not attract the prohibitory clause of Section 497 Cr.P.C. and in such like cases concession of post-arrest bail is to be withheld only in cases of exceptional nature. Ambiguous consideration behind the canvassed transaction, coupled with the fact that petitioner is no more required by ACE in the case, has persuaded me to accept the instant post-arrest bail while placing reliance on the observation of Hon'ble Supreme Court of Pakistan expressed in case reported as Sameen Jan (Naib Tehsildar) and another v. The State and another (PLD 2011 Supreme Court 509), which for reference sake is mentioned hereunder:-

“Allegations levelled against the petitioners (Public Servants) pertained to their roles in attestation of a mutation on the basis of a Permanent Transfer Deed which was subsequently found to be a fake document. Investigation of the case had already been finalized and, thus, physical custody of the petitioners was not required at this stage for the purposes of investigation. Continued custody of the petitioners in jail in circumstances was not likely to serve any beneficial purpose at this juncture. Concession of bail ought not to be withheld by way of premature punishment. Application was enlarged on bail in the circumstances.”

8. During pendency of instant post-arrest bail petition, it was informed that numerous privately engaged persons called as “*Munshi*” are working in the revenue circles of Bahawalpur. Needless to mention here that assigning of official duties by a public servant to a privately engaged person is a novel idea and does not fit into legal mythology, thus a report in this regard was requisitioned through Muhammad Sadiq, Circle Officer ACE, Bahawalpur. Accordingly, a detailed report was prepared and submitted in the Court by Muhammad Sadiq Circle Officer from which it unveiled that in District Bahawalpur 92-*Patwaris* are performing duties in 24-Notified *Patwarkhanas*. This Court is flabbergast after having come across a portion of the report so submitted by the ACE from which it divulges that approximately 95-privately engaged persons are working in the revenue circles of Bahawalpur and in addition to 24-Notified *Patwarkhanas*, 67-others are being run in private buildings most of which are situated in prime localities and are obtained on rent by the respective *Patwaris* through their own financial resources. Muhammad Sadiq Circle Officer ACE mentioned in his report the details of Revenue Circles, the names of *Patwaris*, the particulars of privately engaged persons working in respective circles and the locations of buildings in which *Patwarkhanas* are established from the personal resources of *Patwaris*.

9. On Court's query, it was informed that the salary of a *Patwari* ranges in between Rs.35,000/- to 45,000/- per month and in such circumstances it looks strange

as to how a lowly paid public servant can afford not only the premises on rent but also the services of private persons for the performance of their official duties. It will not be out of context to state here that hiring the services of private persons and establishing of *Patwarkhanas* in private buildings obtained through personal financial resources is a luxury, which by all means does not commensurate with the salary of a *Patwari* and indicates the prevalent corruption in revenue offices. Such malpractice, which is being carried out throughout the Province of Punjab, is giving vent to corruption in revenue circles and unfortunately flourishing day-by-day due to insouciant attitude of bureaucratic hierarchy. A *Patwari* is a “public servant” and any professional misdeed makes him accountable under departmental disciplinary proceedings and also renders him vulnerable to criminal prosecution under the sphere of Anti-Corruption Laws. On the contrary, since the services of a *Munshi* are hired by the *Patwari* through personal financial arrangements, thus for all practical purposes, he is a private person and not a public servant. Very oftently, such privately engaged persons are found involved in record tampering cases and even are burdened with the allegation of receiving illegal gratification but due to their status neither disciplinary proceedings can be initiated against them nor ACE can lay hands upon them. It needs no elaboration that the revenue document is required to be prepared and signed by some official but due to rampant practice of hiring the services of private persons, such document is left to be prepared by a *Munshi*. On occasions, the genuineness of a revenue document so prepared by a *Munshi* is challenged and since the writing and signatures do not match with the writing of a *Patwari* so it entails consequences of a criminal case for forgery against innocent persons. Even otherwise, this is an astonishing idea to leave land record of innocent citizens at the mercy of those who have no acceptable legal justification for their presence in the revenue offices. Even previously such malpractice was noticed by the superior courts and appropriate orders were issued but were ignored through a dogmatic approach. Keeping in view the sensitivity of the issue, I am prompted to mention hereunder the observation of the Hon’ble Supreme Court of Pakistan expressed in *Suo Motu Case (PLD 2001 Supreme Court 1041)*:-

“The system for maintaining police diary should also be looked into. In the past the diary papers were numbered and signed and were given to the Investigating Officers for conducting investigation. The system has totally been destroyed by not adhering to this practice. Now the police diaries are written on simple blank papers not issued officially and can be replaced at any time. On top of it, the Investigating Officers do not know how to write the police diary and they have kept retired police officers for writing police diaries. **Similarly on the Revenue side, Tehsildars or Naib-Tehsildars are keeping retired Tehsildars/Naib-Tehsildars and Patwaris are keeping retired Patwaris for recording mutations, Jamabandis and for performance of other revenue work.** In fact, in the past quota system introduced for the recruitment at the behest of MNAs/MPAs has shaken the foundation of the service structure. No inspection of police stations is generally taking place. Copies of F.I.Rs. and Zimnis i.e. police diaries are not being sent to the concerned authorities. In the past it was the duty of the S.P. to read all these police diaries sent to him and, thus, he

knew and could supervise as to the conduct of the cases/investigation at different police stations within his jurisdiction. Therefore, the practice of sending copies of Zimnis and F.I.Rs. to the concerned authorities should be reintroduced and a law be made for its strict enforcement.”

**(emphasis supplied by underlining the relevant portion)**

Despite the afore-mentioned observation of Hon’ble Supreme Court of Pakistan, the delinquency to retain privately engaged persons in revenue circles is persisting and has embittered general public. This Court also took note of such misdemeanor in the case of Muhammad Adnan v. The State and others (2018 YLR Note 156) and proceeded to summon Senior Member Board of Revenue Punjab, who was directed to eradicate the evil of hiring privately engaged persons from the revenue circles with following direction:-

“It will not be out of place to observe here that the causes in most of the criminal cases arising out of violence against human body and more importantly the incidents of homicide, relate to the land disputes. This dilemma is giving rise to a pressing need to remind the revenue officials to make efforts for elimination of the malpractice of hiring the services of private persons and to keep them at arm’s length from the revenue circles. The most unfortunate aspect of the matter is the fact that the desire of the Hon’ble Supreme Court of Pakistan regarding the exclusion of such privately engaged persons from the revenue circles is within the knowledge of top brass of the Board of Revenue. Though their lackluster attitude in non-compliance of the order of the Hon’ble Supreme Court of Pakistan is blatant contempt, however, it appears to be in fitness of things to part with this order while issuing a warning to them.”

With afore-mentioned observation, this Court in the case of Muhammad Adnan (*supra*) directed Senior Member Board of Revenue to take appropriate steps for bringing an end to the menace and illegal practice of permitting private persons to work in the revenue circles. Unfortunately, even the directions of this Court fell prey to the impassive attitude of Board of Revenue. Though Article 190 of the Constitution of Islamic Republic of Pakistan, 1973 makes it incumbent upon Executive and Judicial Authorities throughout Pakistan to act in aid of Hon’ble Supreme Court but the observation given in above mentioned *suo motu* case met deaf ear response. Inexorably, the Board of Revenue resorted to resilience by taking no steps for complying with the direction of the Hon’ble Supreme Court of Pakistan and of this Court. The non-adherence to the afore-mentioned directions unambiguously makes delinquent officials from Board of Revenue vulnerable to contempt proceedings.

10. In the wake of above facts, notices were issued to Assistant Collector, Deputy Collector and Commissioner Bahawalpur as well as to the Senior Member Board of Revenue. All of them were asked to explain about their delinquency for paying no heed to the directions of the Hon’ble Apex Court and of this Court but they were found speechless and had no explanation to offer. The shortage of revenue staff was the solitary explanation canvassed by the Senior Member Board of Revenue behind the subject illegality, which on account of its frailty is destined to be rejected. In my view,

instead of allowing corruption to go unchecked in revenue circle on the lame excuse of staff-shortage, the Board of Revenue is to go for fresh recruitments. I have no hesitation to hold that conferring permission to a *Patwari*, for hiring the services of a *Munshi* and to establish a *Patwarkhana* in a private building from his personal financial resources, amounts to institutionalizing corruption. It goes without saying that bureaucratic indifference is the best breeding ground for corruption to grow. We must not forget that integrity, transparency and urge to resist against corruption have to be made part of our culture so as to rise as a nation on the world glob. I feel inner pain to mention here that due to afore-mentioned reasons, we are amongst the top nations in the World Index of corrupt countries.

11. This Court is not oblivious of the fact that though the immediate removal of privately engaged persons from revenue offices will cause discomfort to the general public but in order to make Pakistan a better living country for coming generations, we must get rid of all compromises. In view of above, I dispose of this petition in following terms and directions:-

- (i) Rafique Ahmed (petitioner) shall be released on bail in case FIR No.5/2021 dated 05.03.2021 registered under Section 5 (2) of the Prevention of Corruption Act, 1947 read with Section 161 of Pakistan Penal Code, 1860 at Police Station ACE, Bahawalpur subject to his furnishing bail bonds in the sum of Rs.200,000/- with two sureties each in the like amount to the satisfaction of the learned trial court.
- (ii) Senior Member Board of Revenue, Punjab is directed to forthwith take appropriate steps for ensuring that no privately engaged person is permitted to work in the revenue circles or to have access to the revenue record.
- (iii) Senior Member Board of Revenue is also directed to make sure that the offices set up by the *Patwaris* in the private buildings hired by them be immediately shifted to the official buildings.
- (iv) Director General, Anti-Corruption, Punjab is further directed to initiate appropriate proceedings against *Patwaris* who in future are found involved in hiring the services of private persons for the performance of their official duties. Likewise, if in future any such case is detected D.G. Anti-Corruption, Punjab shall take action even against Assistant Commissioner, District Coordination Officer or Commissioner concerned as facilitators.

**(CH.ABDUL AZIZ)**  
**JUDGE**

**APPROVED FOR REPORTING**

**(CH.ABDUL AZIZ)**  
**JUDGE**