

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR.  
(Judicial Department)  
Cr.Misc (B A) No. 1371-P/2016.**

Date of hearing:..... 04.7.2016.

Petitioner (Farid Ullah) by Mr. Gul Rehman Mehmand,  
Advocate.

Complainant by Muhammad Nawaz Khan, Advocate.

The State by Mr. Moeen ud Din Humayun, Advocate.

**SYED AFSAR SHAH, J.-** Through the instant  
petition, the petitioner seeks post arrest bail in case FIR No.  
13 dated 20.1.2016 registered under sections 387/506 PPC/  
25 Telegraph Act/7-H ATA at Police Station, CTD,  
Peshawar.

**2.** **Heard.** The prosecution case as spelt out from  
the record is that Muhammad Naeem, the complainant, who  
was serving as Technician in Health Department, Khyber  
Pakhtunkhwa, received a call on his cell phone and an  
unknown person told him that something has been left at the  
exit door of his house, which he shall receive, however, he  
did not come out and it was in the morning that his children  
while going to School got hold of an envelope, which was  
handed over to him. In the said envelop, there were three  
letters addressed to him, a Contractor Faridullah and one  
Qasim. In the morning, he received a second call where

ransom money amounting to Rs. Fifty lac was demanded from him. In pursuance of the enquiry, conducted by the Investigating Agency, accused-petitioner alongwith Ibrahim (since released on bail by the apex Court) were found involved, making the above calls to the complainant and it was in the backdrop that they were arrested. Both the petitioner and co-accused Ibrahim applied to this Court for their post arrest bail which was dismissed vide order dated 7.3.2016. Feeling dissatisfied with the order of this Court, co-accused Ibrahim filed a petition in the august Supreme Court, which was allowed by their lordship, vide order dated 21.4.2016. After the release of co-accused Ibrahim on bail, accused-petitioner filed post arrest bail petition in the learned lower Court on the ground that co-accused has been released on bail by the apex Court but with no premium to him and, now, he has come to this Court for his release on bail on the ground of rule of consistency.

**3.** The first question which falls for determination before me is as to whether repeating of bail application on the ground that co-accused has been released on bail by the apex Court (rule of consistency) is permissible?

In the case of *Ali Sheharyar vs. The State (2008 SCMR 1448)* it was observed by their lordship that

fresh bail application could be made at a subsequent stage on the ground which were not available at the time of filing of earlier bail application and order passed on the subsequent bail application would not amount to review of the earlier order on the bail application as section 369 of the Code of Criminal Procedure did not apply to such order.

Again, in the case of *Muhammad Abid vs. The State and another (2012 SCMR 1691)* the repeating of bail application on the ground of fresh supplementary challan was held permissible. No doubt, in the present case fresh ground is different from the one referred to *ibid*, but principle is the same.

Similarly, in the case of *Ghulam Qammer Shah vs. Mukhtiar Hussain and others (PLD 2015 SC 66)* the above view was reinforced by their lordship by observing that subsequent application for bail could only be filed and entertained if the same disclosed any fresh ground for such relief, i.e., a ground which was not available at the time of dismissal of earlier bail application. The above view was also followed in the case of *Muhammad Hanif vs. The State and others (2009 P.Cr. L.J 917 Lahore)*.

The ratio of cases cited above is that when an earlier bail petition filed by an accused person is dismissed on merits then second bail application would only be

maintainable if it is filed on the grounds, which were not available to him at the time of dismissal of his first application on merits.

Adverting to my earlier observation, in the present case the petitioner has filed the instant petition after the release of his co-accused on bail by the Hon'able Supreme Court and the ground of rule of consistency was not available to the accused-petitioner at the time of filing of earlier bail petition to this Court.

**4.** Next question is that of the role of petitioner-accused with co accused Ibrahim, who was granted bail by the august Supreme Court. No doubt, accused-petitioner has made confession but while going through the said statement one could observe that as per narration of the petitioner-accused it was Ibrahim, who allegedly made calls to the complainant. In the circumstances, it will be more appropriate to reproduce the operative part of the judgment of the august Supreme Court which reads as follows:-

***“Anyhow without discussing the merits of the case let it prejudice the case of the prosecution, there are many reasons persuasive in nature where grant of bail to the petitioner cannot be legitimately refused, more so when the offence was neither consummated nor any positive step of criminal nature was further taken by the***

**petitioner as has been alleged by the prosecution to fulfill the desired criminal act, therefore, it is a borderline case between attempt to commit the crime and the actual commission of crime. This fact by itself makes the case of the petitioner fit for grant of bail.**”

While going through the above observations of the august Supreme Court one could reach to the conclusion that the role of petitioner is at par with the co-accused released on bail by the apex Court and thus respectfully following the judgment of the august Supreme Court dated 21.4.2016 rendered in Criminal Petition No. 217/2016, the accused-petitioner is admitted to bail on furnishing bail bonds amounting to Rs.1, 00,000/-(Rupees one lac) with two sureties each in the like amount to the satisfaction of Illaqa Judicial Magistrate concerned.

Above are the reasons of short order of even date.

**J U D G E**

*\*M.ZafraI\**