

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail No. 264 of 2013

Date Order with signature of Judge

For Hearing:

29.03.2013: M/s A. Q. Halepota & Barrister Salman Safdar for the

applicant along with the applicant present in person.

Mr. Shahadat Awan, Prosecutor General, Sindh.

Mr. Adnan A. Karim, Addl. Advocate General, Sindh.

ORDER

Mushir Alam, CJ.-

1. Pervez Musharaf, former President of Pakistan, Petitioner herein has appeared and surrendered himself before this Court pursuant to order of protection passed on 22.03.2013. For the purpose of extending transitory and protective bail notice was issued to the Prosecutor General as well as Advocate General, Sindh for today.
2. Mr. Halepota, learned counsel for the Petitioner submits that the The petitioner has appeared and surrendered and left himself at the mercy of the Court. It is contended by the learned counsel for the petitioner that the FIR No.131/2009 was lodged on 11.08.2009 at Police Station Secretariat; Islamabad for an offence punishable under Section 344/34 PPC, which incident, according to complainant, took place on 03.11.2007.
3. It is stated that the petitioner resigned as a President of Pakistan on 18.08.2008 and left Pakistan on 19.11.2008. The FIR was registered much after his departure on 11.08.2009 and since he has returned to Pakistan, surrendered before this Court and is prepared to surrender and appear before the learned trial court, therefore, he

deserves mercy and concession by the Court to enable him to appear and surrender before the learned trial Court to face the charge and defend his position in the subject FIR.

4. Mr. Shahadat Awan, learned Prosecutor General, opposes the application. According to him a person, who is fugitive from law and absconder from justice, therefore, he is not entitled for the concession prayed for. In support of his contention he has relied upon the case of Awal Gul V/s Zawar Khan & Others, PLD 1985 SC 402, wherein the apex Court concluded that a fugitive from law and Courts loses some of their normal rights granted by procedural as also substantive law, unexplained noticeable abscondence disentitles a person from the concession of bail notwithstanding merits of the case. In the cited case the absconded accused was charged with offence under Sections 302/307/148/149, PPC.
5. Mr. Adnan A. Karim, learned Addl. Advocate General, Sindh, contends that this Court has concurrent jurisdiction to granting protection to an accused though in cases where pre-arrest bail is sought, stringent criteria is followed and observed and the Court has to be satisfied that circumstance so exist that it is not possible for the accused to surrender before the trial court. He submits that since the Petitioner is seeking protective bail to enable him to appear and surrender before the trial court, this Court may pass appropriate orders.
6. Mr. Halepota, learned Counsel for the Petitioner, states that due to charged mob outside the court room he could not bring his file and reference book. He however in rebutted the contention of learned prosecutor general Sindh. Mr. A. Q. Halepota, contends that the case of 'Awal Gul' supra is distinguishable. In the cited case prima facie it appears that at the time when the incident occurred and FIR was lodged, accused was very much available and

thereafter he concealed himself to avoid apprehension and prosecution. It was argued that that the absconsion will only be counted when the alleged crime is reported and registered in presence of the accused and it is shown that the accused has deliberately avoided to face the trial and gone in hiding and not in a case, which was registered behind the back of accused and much after he had proceeded abroad. It was next contended that in instant case petitioner proceeded abroad on 18-8-2008 and the FIR was lodged on 11-08-2009 much after his departure from Pakistan. According to him, it is for the first time in the history of Pakistan that a former President has surrendered himself and placed himself at the mercy of the Courts and the Courts have always shown magnanimity in dealing with the accused who surrendered himself and leaves himself at the mercy of the Court. It is stated that Petitioner is prepared to surrender himself before the trial Court and is prepared to defend and face the consequence. He relied upon the case of Noor Muhammad Khatti & Others V/s The State, (2005 PCrLJ 1889), where the conviction was handed down in absentia by the trial court was set aside.

7. I have heard the contentions of learned counsel for the Petitioner and learned Prosecutor General Sindh and AAG. Sind.
8. I have examined the case of Awal Gul V/s Zawar Khan & Others, PLD 1985 SC 402 relied upon by the learned Prosecutor General, Sindh, in the cited case *Awal Gul* was charged with double murder and attempt to murder case. Accused *Awal Gul* was extended bail by a Bench of a High Court. Apex Court took serious view of absconsion of accused after his pre-arrest bail was declined by the learned session Judge, and the apex court cancelled his bail granted by the High Court overlooking criteria to grant bail to absconding accused.

9. A Bench of this Court in a detailed judgment in Noor Muhammad Khatti & Others V/s The State, (2005 PCrLJ 1889) at page 1898 observed that "a person cannot be declared absconder, even for the purpose of issuing proclamation under Section 87 Cr.P.C. if he had already left the country or had no knowledge of issuance of NBWs against him by the Court".
10. In this case the petitioner was out of Pakistan when the subject FIR was registered he has appeared before this Court and placed himself at the mercy of the Court. It is neither a case where the petitioner was facing trial and absconded nor a case where the petitioner could be said to have jumped the bail and nor a case where the Petitioner absconded after the pre-arrest bail was declined. Certainly in cases where the accused has jumped the bail different criteria and more stringent view may be taken to examine the cause of absconsion. Instant case is not a case where it could be said that the Petitioner has jumped the bail and or is avoiding facing the trial, surrender of the Petitioner before this Court and his stance that he wants to face the trial for which protection is claimed is sufficient to consider his plea. In this case even the Petitioner has not applied for the pre-arrest bail rather is seeking protective and transitory bail to enable him to appear and surrender before the trial Court at Islamabad. He appeared and surrendered before this court before 10 days granted to him to appear.
11. Therefore in my humble opinion without adverting to the merits, as rightly contended by the learned AAG Sindh, where the applicant has earnestly approached the Court and prepared to surrender before the trial Court to facing trial, therefore, this Court in all fairness would give fair opportunity to the applicant, more particularly in view of Article 10-A of the Constitution, 1973 which has been

recently introduced through 18th Constitutional Amendment, which guarantees to a person right of fair trial in any criminal charge against him. Accordingly, Petitioner was being extended 10 day to appear and surrender before the trial court. At this stage Mr. Halepota state that Petitioner may be extended five weeks' time to appear and surrender before the trial Court at Islamabad, according to him Petitioner has to appear in number of cases and it may take time to obtain copies and collect material to defend himself in all such cases, according to him even the charged environment out of the court is causing impediment in getting justice. In view of the charge environment, with which the petitioner is faced, and as stated some time may be consumed to procure documents and prepare defense in special circumstances fifteen (15) day time from today is granted to the Petitioner to appear and surrender before the trial court.

12. Learned Trial Court on surrender and appearance of the Petitioner in subject crime may pass order on merits without being influence by the order of Protective Bail passed by this court. Petitioner is however directed to execute personal bond in addition to surety already furnished. In case Petitioner fails to appear and surrender, before the trial court on or before the time allowed, his bail bond may be cancelled and warrants issued by the trial court be executed and surety furnished be forfeited.

Chief Justice

Rashid.