

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOON KHWA**

Service Appeal No. 260 / 2019

Hilal Khan

VERSUS

D&SJ etc.

=====  
**I N D E X**  
\_\_\_\_\_

S.No	Particulars	Dated	Pages
1	Memo		1
2	Judgment	16-01-2024	2-22
3	Order	16-01-2024	23
4	Formal Charge		24-25

Peshawar, dated  
6<sup>th</sup> March, 2024

Muhammad Zafar Khan (Tahirkheli)  
ASC

15-04-24  
Pesh.

①

**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOON KHWA**

Service Appeal No. 260 / 2019

Hilal Khan

VERSUS

D&SJ etc.

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 12042

Dated 02-04-24

=====  
**APPLICATION FOR FILING ADDITIONAL DOCUMENTS**  
=====

**RESPECTFULLY SHEWETH**

1. In the above titled appeal is pending before this Hon'ble Tribunal, in which the under mentioned documents are essential for adjudication of the matter in question on merit:-
  - (a) Judgment of Judicial Magistrate-V Peshawar dated 16-01-2024 passed in Cr Case No. 1125/2 of 21-12-2018.
  - (b) Order dated 16-01-2024.
  - (c) Formal Charge.
2. The above noted documents (copy annexed hereto) may be allowed to be placed on record for just and equitable decision of the matter.

Appellant,

Through:

Peshawar, dated  
6<sup>th</sup> March, 2024

  
Advocate

**Affidavit:**

I, the applicant, do hereby state on oath that the contents of the above application are true and correct and nothing has been withheld or concealed from this Hon'ble Court.

**Deponent**



**IN THE COURT OF MUHAMMAD ASGHAR,**  
**JMIC-IV, PESHAWAR**



84

**FORMAL CHARGE**

State ..... V/S.....Hilal & others.  
FIR No.528, U/S: 419/420/468/471 PPC,  
Dated: 27/10/2018, Police Station: East Cantt

I Muhammad Asghar, JMIC-IV, Peshawar do hereby charge you accused namely:

- (1) Hilal S/o Karamosh Khan R/o Mosazai,
- (2) Jamal Shah S/o Chaman Khan R/o Sikandar Abad Jamrud Khyber,
- (3) Usman S/o Jamal Shah R/o Sikandar Abad, Jamrud Khyber, as follows:

**First:** That you accused Hilal and Usman alongwith absconding accused Zahir Shah, on 23/10/2018 at unknown time, in the Court of Ejaz-ur-Rehman Qazi, Judicial Magistrate-II, Peshawar, falling within the criminal jurisdiction of P.S East Cantt, cheated by preparing fake bail bonds and release warrant in favour of co-accused Jamal Shah by putting fake signatures of JMIC-II, Peshawar upon the said bail bonds and release warrant and you thereby committed an offence punishable u/s 419 PPC and within cognizance of this Court.

**Second:** That you accused Hilal and Usman alongwith absconding accused Zahir Shah, on same date, time and place, within the criminal jurisdiction of P.S East Cantt, cheated by dishonestly putting signatures of JMIC-II, Peshawar on the bail bonds and release warrant in favour of co-accused Jamal Shah, and you thereby committed an offence punishable u/s 420 PPC and within cognizance of this Court.

**Third:** That you accused Hilal and Usman alongwith absconding accused Zahir Shah, on same date time and place, falling within the criminal jurisdiction of P.S East Cantt, put the signatures of the JMIC-II, Peshawar upon the bail bonds and release warrant issued in favour of co-accused Jamal Shah intending that it shall be used for his release, and you thereby committed an offence punishable u/s 468 PPC and within cognizance of this Court.

**Fourth:** That you accused Hilal and Usman alongwith absconding accused Zahir Shah, on same date, time and place, falling within the criminal jurisdiction of P.S East Cantt, fraudulently used as genuine the fake bail bonds and release warrant issued in favour of co-accused Jamal Shah which you knew at the time you so used it, and you thereby committed an offence punishable u/s 471 PPC and within cognizance of this Court.

**Fifth:** That you accused Jamal Shah abetted the accused Hilal, Usman and absconding accused Zahir Shah in commission of the above said offences punishable u/s 419/420/468/471 PPC which offences were committed in consequence of your abetment and that you hereby committed an offence punishable under section 109 PPC and 419/420/468/471 PPC which is in the cognizance of this Court.

And I hereby direct that you accused be tried by me on the aforesaid charges.

**RO & AC**  
13/03/2019

Note: The charge has been read over and explained to accused

Q. Have you heard and understood the charge?

A. Yes.

Q. Do you want to make plead guilty?

A. No, I/We plead not guilty and claim trial.

Muhammad Asghar  
JMIC-IV, Peshawar

13/03/19

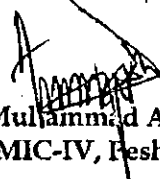
ATT

18

Handwritten notes in Urdu script on the left margin, including the name 'Hilal' and other illegible text.

Certified U/S 364 Cr.PC

Certified that the aforesaid charge was framed in my presence and in the presence of accused. The accused signed the same as token of its correctness.

  
13/03/19  
Muhammad Asghar  
JMIC-IV, Peshawar

**ATTESTED**

13 FEB 2024

(Examiner)  
District Court Peshawar

**IN THE COURT OF SALMAN NADIR**  
**JUDICIAL MAGISTRATE-V, PESHAWAR**

**Case FIR No.528, Dated: 27/10/2018, U/S 419/420/468/471 PPC**  
**Police Station East Cantt, Peshawar**

**Order**  
**16/01/2024**

62


APP for state is present. Accused (1) Hilal Khan, (2) Usman and (3) Jamal Shah on bail are present. The case is fixed for order/judgment in the case. Vide my detailed judgment consisting of 21 pages; the prosecution has failed to proved the charges of Cheating by Personation as per section 419 PPC, cheating and dishonestly inducing delivery of property as per section 420 PPC, Forgery for the purpose of cheating as per section 468 PPC and using as genuine a forged document as per section 471 PPC, beyond any shadow of doubt, as articulated in the formal charge. All the above mentioned accused are hereby acquitted from the case.

Sureties of the accused are discharged from the liabilities of their bail bonds.

Case property [if any] be disposed of according to the law.

The instant case file be consigned to the Record Room after necessary completion and compilation.

**ANNOUNCED**  
**16/01/2024**



**SALMAN NADIR**

Judicial Magistrate-V,  
Peshawar

**ATTESTED.**

13 FEB 2024

(Examiner)  
District Court Peshawar

**IN THE COURT OF SALMAN NADIR**  
**JUDICIAL MAGISTRATE-V, PESHAWAR**

Criminal Case No: 1125/2  
Date of Institution: 21/12/2018  
Date of transfer: 13/12/2023  
Date of Decision: 16/01/2024

63

**Case FIR No.528, U/S 419/420/468/471 PPC**

**Dated: 27/10/2018, Police Station East Cantt, Peshawar**

THE STATE

Through

Aijaz Ur Rehman, Judicial Magistrate-II Peshawar.....(Complainant)

VS

1. Dr. Zahir Shah S/O Chaman Khan R/O Jamrod District Khyber
2. Hilal Khan S/O Faramosh Khan R/O Musazai Peshawar.
3. Usman S/O Jamal Shah R/O Sikandarabad Jamrod District Khyber Agency
4. Jamal Shah S/O Chaman Khan Residents of Sikandarabad Jamrod District Khyber Agency.....(Accused)

**Judgment**

**16/01/2024**

According to the brief facts of the case, one Jamal Shah S/O Chaman Khan was granted bail in (1) Case FIR No.15, Dated:04/01/2018, U/S 489-F/420 PPC, P.S. Hayatabad, (2), Case FIR No.1549, Dated:04/11/2015, U/S 489-F PPC, P.S. Hayatabad, (3), Case FIR No.1026, Dated:03/08/2015, U/S 489-F PPC, P.S. Hayatabad, (4), Case FIR No.2231,

**ATTESTED**

16/01/2024

(Signature)

District Peshawar

Dated:17/12/2016, U/S 489-F/419/420 PPC, P.S. Hayatabad and (5) Case FIR No.479, Dated:14/04/2015, U/S 489-F PPC R/W 512 Cr.PC, P.S. Hayatabad, Peshawar, by different Courts including the Honorable Peshawar High Court Peshawar and was released on bail. The complainants of all the above-mentioned criminal cases namely **Baghi Sher and Tawab Sher** sons of **Haji Zar Hussain** filed a complaint before the Honorable District & Sessions Judge Peshawar against (1) **Ijaz ur Rehman Judicial Magistrate-II Peshawar**, (2) **Jamal Shah**, (3) **Zahir Shah** sons of **Chaman Khan** and (4) **Usman S/O Jamal**, on 26/10/2018. They alleged that respondents no.1 and his staff are involved in illegal practice by accepting bail bonds without any authority- being not Duty/Ilaqa Magistrate- and released Respondent No.2 on simple bail bonds, without verification of the financial status of the sureties. They added that respondent No.2 to 4 have prepared fake and bogus bail bonds with the help of tout sureties and have deceived and cheated the legal process.

The complainant was forwarded to the then Senior Civil Judge (Admin) by the Honorable DSJ Peshawar to conduct inquiry and report. The Inquiry Officer/SCJ (Admin) recorded statements of the JM-II Peshawar and his staff. The JM-II in his statement, denied to have signed the bail bonds and the release warrants. The **Naib Qasid** namely **Hilal Khan S/O Faramosh Khan** stated that, he prepared fake bail bonds and release warrants, impressed the fake signatures of the JM-II over the documents and stamped the same. The Naib Qasid was suspended from his services for three months and report was submitted to the Honorable District & Sessions Judge Peshawar vide order dated 27/10/2018. On the same day the JM-II sent a complaint to the concerned Judicial Magistrate against Jamal Shah, his sureties, their identifiers and all other concerned as they were involved in cheating the Court and legal process by helping the Naib Qasid to illegally release accused Jamal Shah from the Judicial Lock up. The JM-II also sent a complaint to the SHO Police Station East Cantt Peshawar against the Naib Qasid Hilal Khan on account of preparing fake release warrants and bonds by impressing the signatures of the JM-II.

The written complaint dated 27/10/2018 sent by the JM-II to the SHO P.S East Cantt was reduced into the instant case FIR No. 528,

64  
8  
ATTESTED  
13 FEB 2024  
(Examiner)  
District Court Peshawar





Dated: 27/10/2018, U/S 419/420/468/471 PPC initially against accused Hilal Khan. Later on, during the course of investigation, Haji Tawab Sher recorded his statement U/S 164 Cr.PC on 20/12/2018 before the Judicial Magistrate-I, Peshawar and stated that accused (1) Jamal Shah, (2) Zahir Shah sons of Chaman Khan and (3) Usman S/O Jamal Shah were hand in gloves with accused (4) Hilal Khan S/O Faramosh Khan for the preparation of fake bail bonds and release warrants. Thus all the above mentioned accused were nominated in the instant case as accused.

During the course of investigation, accused Hilal was arrested on 27/10/2018 while Usman were arrested on 02/11/2018. Accused Jamal Shah, who was in the Judicial Lock Up in respect of case FIR No.1026, was shown to have been arrested on 05/01/2019. Accused Zahir Shah was granted ad-interim pre-arrest bail on 05/01/2018. During the investigation, after failing to collect any evidence against accused Zahir Shah, the I/O suggested to discharge him U/S 169 Cr.PC. Police delayed his arrest and accused withdrew his BBA Petition. The I/O collected copies of the allegedly fabricated bonds and release warrants. He also placed on the file the inquiry proceedings carried out by the SCJ Admn Peshawar. He recorded statements of the accused and the official witnesses U/S 161 Cr.PC.

Complete Challan/Report U/S 173 Cr.PC was submitted for trial on 21/12/2018. Copies of necessary and mandated documents were handed over to the accused Hilal and Usman U/S 241-A Cr.PC on 03/01/2019 and to accused Jamal Shah on 31/01/2019. Formal charge was framed on 13/03/2019 against all the accused (except accused Zahir Shah) to which the accused pleaded not guilty and claimed trial. The prosecution was provided with the opportunity to produce their evidence.

Prosecution produced the Complainant namely Ejaz ur Rehman Qazi [the then JM-II Peshawar and currently presiding over the Honorable Court of AD&SJ-XVII, Peshawar] as PW-9. He stated in his examination in chief that, during the days of occurrence, he, as JM-II Peshawar, drafted a written application to the SHO P.S. East Cantt Peshawar to take legal action against accused Hilal Khan. The application is present on the file and marked as ExpPW9/1. His statement was recorded by the inquiry Officer Alamgir Shah

6-5

8

ATTESTED

13/11/2024

(Examiner)

District Court Peshawar

[SCJ Admin Peshawar] which is also present on the file as **Annexure-A** and he verified its contents to be true and correct. He sent a letter bearing number 53/JMIC-II, dated 27/10/2018, to the Judicial Magistrate to whom the Police Station Hayatabad is assigned, copy of which is present on the file as **Annexure-B**. Upon his application, the instant case FIR No.528 has been lodged.

During his cross examination, he stated that the day of occurrence is 23/10/2018 at unknown time and report was made to the police on 27/10/2018. He admitted the suggestion that Baghi Sher etc have filed a complaint against him before the District and Sessions Judge Peshawar. He self stated that an inquiry was conducted on the complaint and during the process accused Hilal Khan confessed his guilt and the instant case was reported to the police. He stated that accused Usman and Jamal weren't nominated in the FIR. He admitted the suggestion that accused Usman neither stood as a surety nor the identifier of the bail bonds. He stated to have no knowledge that CCTV cameras are installed anywhere in the Courts' premises including his Court. He admitted the suggestion that, in his application/complaint/report to the SHO, P.S. East Cantt, the word "directed" is mentioned which is in fact the word "requested" to take action against the accused Hilal Khan. He admitted the suggestion that, whenever the bail bonds of an accused is produced before the Judicial Magistrate, he verifies and attests the same and forward to the Muharrir of the Court. He added that in case the bail amount is more than Rs. 100000/-, the Magistrates, in order to ascertain the financial status of the surety, ask for proof of ownership of the surety over some property in shape of Revenue Records and after the verification of the revenue documents by the concerned Tehsildar, the bonds are accepted. He self stated that the same procedure wasn't followed in the bail proceedings of accused Jamal Shah. He admitted the suggestion that his instant self statement isn't mentioned in the case FIR No.528. He admitted the suggestion that after attestation of the bail bonds, the concern Muharrir of the court prepares the Release Warrant which is signed by the Judicial Magistrate and thereafter, an entry is made in the Dispatch Diary/Daak Bai [of release warrants] for onward proceedings to the Jail Authorities. He admitted the suggestion that the jail authorities have got the specimen of the

66

9

**ATTESTED**

131

(Examiner)

District Court Peshawar

signature of the Judicial Magistrate empowered to issue release warrants. He self stated that the jail authorities released the accused despite the fact that the bail bonds and release warrants didn't carry his signatures. He stated that the I.O hasn't requested for the specimen of his signature for comparison with the signatures in the bail bonds and release warrants for sending them to the FSL. He stated to have never asserted that seal of the Court has been fabricated. He self stated that accused Hilal Khan has admitted during the inquiry that he used the seal when the undersigned was on leave. He stated to have no knowledge that accused Hilal Khan was tortured before recording his confessional statement.

67

8

**Haji Baghi Sher** as PW-8. He stated that accused Jamal Shah gave cheques to him which were bounced and various FIRs were lodged against him. He was ordered to be released on bail but accused was unable to produce required bail bonds. The brother accused Jamal Shah namely Khadi Shah informed the witness from England through telephone on 25/10/2018 at 1045 hours that accused Jamal Shah has been released from the jail. He and his brother Tawab Sher approached the Judicial Magistrate Asghar Khan who told them that accused Jamal Shah hasn't been released by him. He then submitted complaint before the Honorable DSJ Peshawar, Member Inspection Team and Worthy Chief Justice of the Peshawar High Court. Inquiry was conducted on 27/10/2018 and accused Hilal Khan confessed his guilt before the inquiry Officer namely Alamgir Shah/SCJ Admin Peshawar and he was shifted to the police station. He then filed BCA against accused Jamal Shah and his production order was issued and on 23/10/2018. The production order was cancelled on the application filed by the counsel of the accused Jamal Shah and thereafter; the fake bonds and release warrants were prepared by the said accused while the co-accused Usman and Zahir Shah were equally responsible for the offence.

During his cross examination, he stated that he hasn't mentioned in his statement U/S 164 Cr.PC that complaint has also been made to the MIT and the Peshawar High Court and that the accused was shifted to the police station. He stated to have no knowledge whether he has alleged in his statement U/S 164 Cr.PC that fake bonds and release warrants were prepared. He denied the suggestion that he is now improving his statement earlier

**ATTESTED**

13/11/2018  
(Examined)  
District Court Peshawar

recorded U/S 164 Cr.PC to strengthened the prosecution case. He stated not to have appeared before the Inquiry Officer/SCJ Admin Peshawar. He stated to be a business partner with accused Jamal Shah and one of his sons namely Sajid which was running until 2015. He stated not to have approached any forum to lodge a case against the sureties and their identifiers. He stated not to have challenged the discharge of the accused Zahir Shah U/S 169 Cr.PC by the I.O of the case. He stated to had gotten information of the present case on 25/10.2018. He stated not to be the ocular witness of the entire occurrence taken place on 23/10/2018. He admitted the suggestion that in the days of the occurrence, CCTVs were installed all over the court premises and inside of the courts. He also admitted that accused Jamal Shah was behind the bar in the fateful day. He admitted the suggestion that accused Jamal Shah deposited cash for his release on bail. He admitted not to have recorded his statement before the inquiry officer/SCJ Admin. He admitted the suggestion that he has never alleged that the signatures on bail bonds and release warrants are fake and bogus. He denied the suggestion to have registered a fake case to grab money from the accused.

68

A

**Haji Tawab Sher** appeared as PW-10. In his examination in chief, he stated that, he charged accused Jamal Shah in 05 different FIRs U/S 489-F PPC and 419/420 PPC and accused got bail form different courts including the Honorable Peshawar High Court. On 25/10/2018, brother of the accused Jamal Shah called the witness from Ireland and told him that his brother has been released on bail and threatened brother of the witness with dire consequences. The CDR is placed on the file. Then PW-8 informed the witness that accused Jamal Shah has escaped from the prison. He rushed to the court of Muhammad Asghar JM Peshawar/trial court of the cases against accused Jamal Shah. Upon inquiry, they came to know that accused Jamal Shah has escaped from the jail by producing fake bail bonds and release warrants issued from the Court of the JM-II Peshawar. He confirmed that the JM-II wasn't an MoD as JM-I Peshawar/concerned Court was performing his duties on the same day. He filed a complaint before the DSJ Peshawar who marked the same to the SCJ Admin Peshawar for inquiry. Thereafter; he came to know that the instant FIR has been lodged in result of the inquiry. He came to know that accused Jamal Shah is the mastermind behind the instant

**ATTESTED**

13 FEB 2019

(Examiner)

District Court Peshawar

case as he let the accused Usman and Zahir Shah to come to the Court, met some people to prepare fake bonds and orders for his release.

During his cross examination, he contradicted some of the assertions in his examination in chief with that of his statement U/S 164 Cr.PC. He denied the suggestion to have been improving his statement recorded during the investigation of the case. He stated not to have presented any CDR to the I.O. He stated to have no knowledge that a JIT was formed in the case. He stated not to have challenged the discharge of accused Zahir Shah by the Investigation Officer. He stated that he neither came to the Court premises on the day of occurrence nor is a witness of the offence. He stated not to have filed a complaint/22-A Petition against any Muharrir of the JM-II and jail officials. He stated to had filed a complaint against all the staff of the JM-II as bribe money was used. He stated not to have any proof of giving or taking a bribe and he hasn't produced any witness before the inquiry Officer/SCJ Admin Peshawar.

Sub-Inspector namely **Shah Alam** of the P.S Faqirabad appeared as **PW-3**. He stated in his examination in chief that, he has conducted partial investigation in the case. He obtained arrest warrants of accused Jamal Shah and Zahir Shah through an application marked as **ExpPW3/1**. He also filed an application for the proclamation notices U/S 87 Cr.PC which is marked as **ExpPW3/2** and recorded the statement of the DFC U/S 161 Cr.PC. During investigation, he came to know that accused Hilal has recorded his statement during the inquiry before the SCJ Admin Peshawar and his video has been prepared in this regard by the Inquiry Officer/SCJ Admin. He moved an application to the concerned Magistrate for obtaining the video recording which is marked as **ExpPW3/3**. He took into recovery the USB where the video was stored and sealed it into a parcel. The recovery memo was prepared which is present on the file marked as **ExpPW3/4**. The USB is **Exp1** while the brown color envelope is marked as **Exp2**. On 05/01/2019, he moved an application for the production order of the accused Jamal Shah to produce him before the JM. The said application is marked as **ExpPW3/5** while the arrest memo is marked as **ExpPW3/6**. He filed another application to obtain custody of the accused Jamal Shah which is marked as **ExpPW3/7**. He recorded statement of accused U/S 161 Cr.PC and produced him before

69

8

ATTESTED

13 FEB 2019

(Examiner)

District Court Peshawar

the magistrate with an application for recording his confessional statement which is marked as **ExpW3/8**. He also produced Haji Tawab Sher to record his statement U/S 164 Cr.PC as his statement U/S 161 was earlier recorded by Sher Rehman ASI. He endorsed his signatures over all the documents he has prepared and signed.

In his cross examination, he stated that, during the course of investigation, he came to the Court premises to find out the master mind behind the offence but no one deposed as such. He stated to haven't surfaced the place where the fake bonds and warrants were prepared. Accused Jamal Shah, Usman and Zahir Shah were arrayed on the statement U/S 161 and 164 Cr.PC of Haji Tawab Sher. He stated that accused Jamal shah was nominated in the case before the statement of Tawab Sher but couldn't corroborated the same stance through records. He stated to have no clue that a JIT was constituted in the instant case. He stated that as per the findings of the JIT, no contacts were surfaced between accused Hilal Khan and Zahir Shah etc and between the brother of Jamal Shah and Tawab Sher etc. He stated that he hasn't sealed the parcel containing the USB. He stated that as per the recovery memo, there is no reference present that the USB was either displayed before him or he and any of the marginal witnesses have watched the same. He stated not to opine that whether a USB cane be edited or not but self stated that an expert can do it. He stated not to accept or deny the suggestion that any individual can edit or delete a content from a USB. He admitted the suggestion not to have sent the USB to the FSL and hasn't recorded the sample voice of the accused Hilal Khan for matching. He stated that relevant page of Register 19 [used to record case properties] in respect of the USB isn't present on the file. The occurrence is of 27/10/2018 while the USB was taken into recovery on 22/12/2018 and no specifications of the USB is mentioned in the recovery memo. He admitted the suggestion that until 22/12/2018, the existence of the USB isn't founded anywhere in the records. He stated not to have mentioned the person who informed that a video has been recorded where accused could be seen confessing his guilt. He stated that, except the statement of Tawab Sher, no other evidence is present against accused Jamal Shah and Usman. He stated to have no information that accused Zahir Shah has been discharged U/S 169 CrPC.

70

9

**ATTESTED**  
(Examiner)  
District Court Peshawar

**Sher Rehman; ASI P.S West Cantt Peshawar**, appeared as PW-5. He stated in his examination in chief that, he produced accused Hilal Khan before the JM for obtaining custody which was allowed for one day. The Application is parked as **ExpPW5/1**. He recorded the statement of the accused U/S 161 Cr.PC in which he confessed his guilt and he produced the accused before the JM for recording the statement vide application marked as **ExpPW5/2**. He also moved an application to the JM for handing over the fake bail bonds and release warrants. The application is marked as **ExpPW5/3** while recovery memo in respect of the bail bonds is marked as **ExpPW5/4**. Copy of the relevant page of the Daak Book of the Court of the JM-II is present on the file and marked as **ExpPW5/5**. He took into recovery copies the release warrants which are marked as **Exp1** to **Exp5**. The envelope containing the release warrants is marked as **ExpPW5/7** while specimen of the "SR" monogram over the sealed envelope is marked as **ExpPW5/6**. He filed application for custody and for recording confessional statement is marked as **ExpPW5/8** and **ExpPW5/9** respectively. He filed an application to record the statement of Haji Baghi Sher U/S 164 Cr.PC which is marked **ExpPW5/10**. He recorded the statement of PWs U/S 162 Cr.PC. The investigation was entrusted to other I.O after his transfer from the P.S East Cantt.

During his cross examination by accused Usman and Jamal Shah, he stated the occurrence took place on 23/10/2018 at an unknown time while the matter was reported to the police on 27/10/2018 and the instant case was registered on the basis of inquiry. The inquiry was initiated on the application of JM-II who is also complainant in the instant case. He stated not to have recorded the statement of the inquiry officer U/S 161 Cr.PC or 164 Cr.PC. The local police was directed by the complainant to lodge the case FIR vide letter dated 27/10/2018. Accused Usman and Jamal Shah weren't nominated in the FIR neither they were given any role for abetment etc. He stated not to have sealed the documents mentioned in **ExpPW5/4** and the same are photocopies and the same were presented by the one Ameer Abbas who is Muharrir of the Court of the Complainant. He admitted the suggestion that he hasn't recorded the statement of Ameer Abbas U/S 161 or 164 Cr.PC. He had no words to state that whenever the bail bonds are produced before the Court, they are checked by the presiding Officer and after calling the sureties and

71

8

**ATTESTED**

13 FEB 2019  
 (Examiner)  
 District Court

identifiers, the same are attested and verified by the presiding officer and similarly the release orders are prepared by the concerned Muharrir of the Court and thereafter signed by the P.O. He stated not to have applied for verification of the signatures of the sureties and identifiers through the NADRA and haven't attempted to surface their financial status. He stated not to have obtained the specimen signature of the complainant/JM-II in order to forensically compare with that in the bail bonds and release warrants. He denied the suggestion that the complainant had refused to give his specimen signature to sent to the FSL. He admitted the suggestion that no USB was handed over by the complainant to him throughout his investigation. He stated that when he was interrogating the accused Hilal Khan, he was under pressure. In the statement of Haroon Muharrir/PW-7, he hasn't asserted that the stamp of the JM-II was misused or misplaced. He admitted the suggestion that the Jail authorities have never doubted the bail bonds and release orders and signature of the P.O over the same. He stated that, except the written application, he found no evidence at all against accused Hilal Khan. He denied the suggestion that the complainant wasn't ready to give his specimen signature and was avoiding the same which is clear from the case records. He the stated not to have prepared the site plan. Haji Tawab Sher and Baghi Sher are neither court officials nor eyewitnesses of the occurrence. He admitted the suggestion that CCTV cameras are installed on all gates, court premises, outside and inside of the courts and he hasn't obtained the same. He stated that despite the presence of CNIC numbers of the sureties in the bail bonds, he hasn't recorded the statements of the sureties and their identifiers. He stated that accused Hilal Khan hasn't mentioned the names of accused Usman and Jamal Shah in his statement.

Junior Clerk of the Court of Sessions Peshawar namely **Haroon Khan** appeared as **PW-7**. In his examination in chief, he stated that the daakbai was handed over by Amir Abbas Muharrir on the direction of the presiding officer/complainant to the I.O which he took into recovery through memo already marked as ExPW5/5. The Muharrir also produced bail bonds and copies of the CNICs to the I.O. The I.O then recorded his statement U/S 161 Cr.PC.

72

8

ATTESTED

2024  
(Examiner)  
District Court Peshawar



During his cross examination, he stated that both the recovery memos ExPW5/4 and ExPW5/5 were affected on a same day. Muharrir Ameer Abbas isn't a witness to any of the recovery memos. He repeated the standard procedure of the attestation, verification of the bonds as well as the process of issuing release warrant and its onward dispatch to the jail. He stated the jail authorizes return the bonds or the release warrant when a slight anomaly is observed therein. The stamps are usually present in the custody of the Reader and Muharrir of the Court.

Police Constable namely **Jamil Ahmad** appeared as PW-6. In his examination in chief, he stated to be the marginal witness of the Recover Memo already marked as ExPW2/1 vide which Shah Alam took into custody the USB. He endorsed his signature over the recovery memo.

During his cross examination, he stated that the date of report is 27/10/2018 while the USB was taken into custody on 22/12/1018. He stated that statement of the accused Hilal Khan is recorded in the USB U/S 164 Cr.PC. He admitted the suggestion that statement U/S 164 is recorded before a Judicial Magistrate. As per the contents of the recovery memo, there is no reference present that the inquiry officer/SCJ admin was a Judicial Magistrate in those days. He stated not to know as to who presented the USB to the I.O. He stated that the USB has neither been prepared by him nor played before him. He stated not to know how the recovery memo of the USB was sealed. He stated to have has got no clue regarding the specifications, brand and capacity of the USB. He denied the suggestion that the I.O has affixed his signature in the recovery memo.

Sub Inspector (retired) namely **Muhammad Alam** appeared as PW-2. He stated in his examination in chief that, during the days of occurrence, he was posted as SI in P.S East Cantt Peshawar and chalked the case FIR. He endorsed his signature over the FIR and the same was marked as **ExPA**.

During his cross examination, he stated that no Marasila is present on the file. He admitted the suggestion that, in the FIR, it is clearly mentioned that the complainant/JM-II has directed the police to lodge an FIR. He admitted the suggestion that the complainant/JM-II had issued the directions, presented copy of the statement of the accused and the handed over the

73

8

**ATTESTED**

13/11/2018  
(Examiner)  
District Court Peshawar

accused on a same day to him and he instantly arrested the accused. He added that at the time of arrest, neither case FIR was lodged nor any complaint was submitted. He admitted the suggestion that, according to the records, statement of the accused was neither recorded an oath [by the inquiry officer] nor the witness was present there when the statement was being recorded. He admitted the suggestion that no order of inquiry [prior to registration of the case FIR] was given by the complainant-JM-II and the inquiry Officer. He denied the suggestion that, as judicial officers are involved in the matter, therefore; he is intentionally favoring them to save their skin and malafidely involved accused Hilal Khan in the instant case.

Police Constable of P.S East Cantt Peshawar namely **Habibullah** appeared as **PW-1**. He stated to be the marginal witness of the Recovery Memo placed on the file vide which the I.O recovered five (05) release warrants issued for accused Jamal Shah in different FIR numbers. The I.O sealed the parcel and affixed 03 monograms of SR in his presence. The witness endorsed his signature on the Recovery Memo and added that the I.O also recorded his statement U/S 161 Cr.PC. The recovery Memo was marked as **ExpW1/1**.

During his cross-examination by accused Jamal Shah and Usman, he admitted the suggestion that, it is the job of the Muharrir of the Court to prepare the release warrant, duly signed by the Judge and sent to the jail by the Court officials.

During his cross examination by accused Hilal Khan, the witness stated not to remember the exact date of recovery memo as sufficient time has passed. He stated to have reached the jail at 0930/1000 Hours with the I.O and the recovery memo was prepared on the spot/jail and he signed the same. He stated that his statement U/S 161 Cr.PC was recorded a few days after the preparation of the recovery memo. He stated not to know whether the I.O had recorded statement of any other person at the time of preparation of recovery memo or not. The Assistant Superintendent Jail Peshawar handed over the release warrants to the I.O and statement of the ASP wasn't recorded in his presence. He stated to have no information as to whether the jail authorities.

74

ATTESTED

13/1/24  
(Examiner)  
District Court Peshawar

After completion and closure of the prosecution evidence, statements of the accused were separately recorded U/S 342 Cr.PC. To the **Question no.1** stating that, Haji Baghi Sher and Tawab Sher have charged you along with the co-accused in their statement U/S 164 Cr.PC, alleging that you have prepared fake bail bonds and release orders for accused Jamal Shah. Accused Hilal Khan relied that he don't know accused Jamal Shah while Baghi Sher and Tawab Sher have malafidely charged him. He has no concern with the bail bonds and release orders, which is job of the Muharrir of the Court and thereafter, the concerned Judge signs the same. He stated that signatures of the Complainant/JM-II have neither been denied on the bail bonds and release warrants nor sent to FSL for verification. To the **Question No.2** regarding the inquiry leading to the instant case FIR, he stated that, Baghi Sher and Tawab Sher had filed complaint against the JM-II/complainant and accused Usman and others but the then SCJ Admin/Inquiry Officer pressurized him to confess the guilt in presence of the police officials, which he denied to record. Answering the **Question No.3**, he stated that the JM-II/complainant hasn't requested to lodge the instant FIR against him, rather than he ordered to registered the same which is illegal. To the **Question No.4** regarding the presence of the video recording of his statement stored in a USB, he stated to be unaware of any such thing. The way the USB has been prepared, the same is an inadmissible piece of evidence.

Accused Usman and Jamal Shah stuck to their instance and didn't admit any of the questions put forward by the prosecution regarding their involvement in the instant case. They reiterated their stance that they know nothing about the occurrence, and Baghi Sher and Tawab Sher have malafidely staged the whole occurrence just to compel accused Jamal to their terms regarding their business affairs.

All the accused refused to produce any evidence in their favor and also not opted to record their statement on oath U/S 340 Cr.PC.

Arguments were heard at length from learned Counsel of accused Hilal Khan namely Muhammad Yasir Khattak Advocate and Tafsil Khan Afridi for accused Usman and Jamal Shah. The learned APP Shahryar Afridi represented the state.

ATTESTED

13  
(Examiner)  
District Court Peshawar

Records were thoroughly perused.

All the accused have been charged with the offences of Cheating by Personation as per section 419 PPC, cheating and dishonestly inducing delivery of property as per section 420 PPC, Forgery for the purpose of cheating as per section 468 PPC and using as genuine a forged document as per section 471 PPC, with the allegations of the preparation of fake and bogus bail bonds and release warrants in order to ensure the release of accused **Jamal Shah** from the **Central Jail Peshawar** whose bail in different cases were granted by different courts in Peshawar including the Honorable Peshawar High Court Peshawar.

76

Following is the detailed analysis of the case presented for trial and the entire evidence upon which the case has been built by the prosecution.

8

The events leading to the instant case started from a complaint filed by Haji Tawab Sher and Haji Baghi Sher before the Honorable Court of District and Sessions Judge Peshawar against the JM-II [complainant in the instant case] and his staff, alleging that accused Jamal Shah has been illegally and unauthorizedly released by accepting the bail bonds of the sureties without any verification of their financial status and the JM-II not being entrusted for the Judicial work of the cases from which the accused Jamal Shah has been ordered to be released. After a departmental inquiry and statement of the accused before the same, the JM-II has sent the instant complaint to the police alleging that he has never signed the bail bonds and hasn't issued the release warrants. Actually the accused Hilal Khan has prepared fake bail bonds and release warrants. During the course of investigation of the instant case, rest of the accused were nominated in the instant case by Haji Tawab Sher in his statement U/S 164 Cr.PC alleging that they helped and prepared accused Hilal for the commission of the offences.

1. As far as the allegation of Haji Tawab Sher is concerned, that the present complainant/JM-II wasn't entrusted to deal with the bail bonds and release warrants of accused Jamal Shah as the same work was assigned to other Magistrate in Peshawar. Record reveals that no duty roster of the Judicial Magistrates of Peshawar vis a vis their respective police stations is present on the file which could have ascertain that the JM-II was acting

ATTESTED

13 124  
(Examiner)  
District Court Peshawar

unauthorizedly or wasn't assigned the duties to deal with the bail bonds and release warrants of the accused Jamal Shah. The inquiry carried out by the SCJ Admin hasn't surfaced the fact also. Even the complainant/ JM-II hasn't contended anywhere that he wasn't entrusted with the judicial work in the cases from which accused Jamal Shah was to be released on bail.

2. The JM-II has alleged that he hasn't signed or stamped the bail bonds and the release warrants of accused Jamal Shah in any of the cases. The bail bonds and the release warrants are present on the file which reveals that almost a same signature is impressed on all the documents and no anomalous or ill-patterned lines can be seen through bare eyes and by a non expert observer. The first fact to prove in the instant case by the prosecution is to verify the signatures through an FSL report. The complainant/JM-II has stated that the I.O didn't deem it necessary to ask for his specimen signature in order to sent the same to the FSL for verification. According to the records, an application to obtain the specimen signature of the complainant was moved to the concerned Magistrate on dated 15/11/2018 (duly forwarded by the DPP Peshawar) but no order from the Court is present on the file. According to the Police Zimni No.13 dated 14/11/2018, the I.O had requested the complainant for his specimen signature but it has been mentioned that the complainant is busy in official work and he will himself call/inform the I.O for the same. On the next day the I.O attempted to consult the complainant but he was stated that the complainant is busy in Peshawar High Court and thus no further progress was made in this regard. There is nothing present on the record that whether the I.O consulted the JM-II/complainant again or the JM-II/complainant has re-called the I.O for the same. Thus a scientific and an admissible way to determine the veracity of the signatures and the involvement of the accused Hilal Khan in the instant case without any doubt was left out without any justification. It was the responsibility of both the complainant as well as the prosecution to have ascertained their allegations without any benefit of doubt.
3. Counsel for both the accused have contended that the complainant has ordered the SHO to lodge the instant FIR and the police acted under the pressure and have swiftly obeyed the order without applying their mind and shedding a glance over the facts. Perusal of the complaint/application

77



ATTESTED

24  
(Examiner)  
District Court Peshawar

by the JM-II to the SHO P.S. East Cantt reveals that, the complainant has used the word "directed to take appropriate action as per law against the official named above forthwith under intimation to this Court positively". It is an admitted legal position that a Magistrate isn't empowered to direct the police to lodge an FIR and asked for intimation positively in the same respect rather than the Justice of Peace is empowered to issue such directions. During his cross examination, the JM-II/Complainant has admitted to have used the word "directed". Although the I.O denied the suggestion that he lodged the FIR under the influence of the status of the complainant yet he has admitted to have lodged the FIR without any inquiry and arrested the accused Hilal Khan prior to the registration of the case FIR. He didn't bothered to produce the accused Hilal Khan to record his statement before the Magistrate U/S 164/364 and reckoned the statement of the accused Hilal Khan as either confession or statement U/S 164 Cr.PC. The law is clear that statement of any person during a departmental inquiry couldn't be treated either as a confession within the meaning of 164 Cr.PC in a manner given in the Section 364 of the Cr.PC. The accused Hilal Khan has stated before the Inquiry Officer that "the relatives of the accused Jamal Shah came to me in the Old Judicial Complex Peshawar on 23/10/2018 and told me about the release of accused in the above mentioned cases in which bail has been granted by different honorable forums. I, at once, showed my willingness and prepared fake bail bonds and release warrants in the above mentioned FIRS and put the fake signatures of the learned Judicial Magistrate-II Peshawar Mr. Ijaz ur Rehman Oazi. The bail bonds release warrants were also stamped thereafter. I admit my guilt and expose myself to any punishment by the competent authority". The accused has stated in his statement U/S 161 Cr.PC recorded before the I.O that, he is the Naib Qasid of the JM-II and on 23/10/2018, a an unknown person approached him in the veranda of the Court having bail bonds and release warrants in his hand. He told the accused that the Court has issued the bail bonds and release warrants but the forgot to stamp the same. He took the documents to the Court and as the presiding officer wasn't on his chair, therefore; he took out the stamp from the drawer and affixed the same on the bail bonds and the warrants. As it has been stated earlier that the statement of the

78

S

ATTESTED

13  
 District Court, Peshawar

accused before the inquiry officer during a departmental proceedings couldn't be reckoned as a confession. As far the investigation is concerned, the I.O has solely relied on the statement of the accused recorded before the inquiry officer. Most importantly the inquiry officer/SCJ Admin hasn't appeared as a witness before whom the accused Hilal Khan recorded his statement and admitted the guilt. This event alone has created a meaningful doubt regarding the acceptance of the statement of the accused Hilal Khan. The I.O hasn't investigated the case as per the lines of the statement of the accused recorded U/S 161 Cr.PC. If that was to be the case, the I.O would have bothered to have contacted the sureties of the bail bonds and should have included them in the investigation. The I.O wasn't serious to ensure that the signatures of the JM-II in the bail bonds should be verified especially in the back drop of the statement of the accused U/S 161 Cr.PC. The I.O has admitted that CCTV cameras are installed in and out of the Courts yet he failed to collect and place on the file the footage of the moments when accused Hilal Khan was looking into the drawer of the presiding officer and stamping the bonds and orders. Accused Hilal Khan has stated that the bonds were given to him carried only one deficiency of not having stamped, but the I.O has failed to bring an iota of a fact as to where the bonds were prepared and by whom. It is an admitted position that Baghi Sher and Tawab Sher aren't the ocular witnesses of the occurrence in the instant case. All these findings have rendered the investigation as faulty and the conduct of the I.O seems that he has believed the statement of the accused Hilal Khan recorded before the Inquiry Officer and what was being put before him by the complainant. Another proof of the blind belief of the I.O is that, he didn't send the USB to the FSL for verification. He hasn't attempted to specify the recording device or to take the same into recovery and failed to substantiate that how the safe custody of the USB was ensured for more than two months from the time of its preparation till the time of handing over to the I.O. Ironically both the Investigation officers haven't played, watched or listened to the video recording where the accused is alleged to have confessing his guilt. These events/mishaps speak volumes about either their inefficiency or it might be the result of the pressure which they felt when they were directed

79

S

**ATTESTED**

13

(Examiner)

District Court Peshawar

by the Judicial Magistrate to take action and also asked for an intimation report.

4. As far as the involvement of co-accused Usman and Jamal Shah are concerned, not a single piece of evidence is present on the file against their involvement. Accused Hilal Khan has stated not to know any of the co-accused. CDR of accused Hilal Khan reveals no contact with any of the co-accused. No CCTV footage or ocular witness is present on the file which could have ascertained the presence of the co-accused within the Court premises on the fateful day. A Joint Investigation Team was instituted in respect of the involvement of accused Zahir Shah in the instant case but he succeeded to satisfy the JIT and the I.O regarding his Plea of Alibi and innocence. He has been suggested to be discharged U/S 169 Cr.PC by the I.O. As accused Jamal Shah was in the Jail, so his involvement in the instant case isn't possible although he is beneficiary of all the proceedings taken place on the fateful day of 23/10/2018. The only reason for the involvement of accused Usman, Zahir Shah and Jamal Shah is the statement of Haji Tawab Sher U/S 164 Cr.PC during the course of investigation. The witness has categorically admitted that neither he nor his brothers are witnesses of any of the events taken place on the day of occurrence. It is an admitted fact that none of the co-accused have stood as sureties or the identifiers of accused Jamal Shah. As the sureties haven't been investigated at all therefore role of the co-accused couldn't be established in the instant case although they are the beneficiaries of the alleged offences in the instant case.

5. As far the prevailing practice of verification of bail bonds is concerned, the filled bonds are presented by the Counsel or his assistant or his clerk along with the sureties before the reader who check the entries and respective CNICs and ensure that the sureties aren't touts [as lists of touts are regularly circulated to the Courts). He then passes on the same to the presiding officer who verifies by asking the willingness of the sureties, their confirmation and the after affects of the non appearance of the accused. Upon his satisfaction, the P.O signs the bonds and sends the same to the Muharrir of the Court. He arrange the copies for each stake holder and prepares the release warrants. He then presents one of the bonds with a release warrant before the P.O to sign and stamp. The Muharrir then enters

80

9

**ATTESTED**

137  
(Examiner)  
District Court Peshawar



the details in the Dispatch register/Daak Bai and hands over the same along with the bail bond and release warrant to an official assigned by the Court to take the same to the Jail. The official then handover the bonds and release order to the jail officials who sign the Dispatch Register confirming the receiving of the same. The official then come back to the Court and the jail officials release the accused as per their SOPs. In case when the surety amount is more than Rs. two Lacs, then the sureties are bound to provide the proof of their means to afford the surety amount. Usually revenue documents of the proof of ownership of the sureties are asked. When they produce the same, they are sent to the revenue office for verification through proper channel and after confirmation of the same, the bonds are accepted and verified. In the instant case, accused Jamal Shah's bail amount in five cases were, **Rs.400000/-** in FIR no.15, **Rs.1000000/-** in FIR No.1549, **Rs.1000000/-** in FIR No.1026, **Rs.100000/-** in FIR No.479 and **Rs. 2000000/-** in FIR No.2231. From the amount of the bail, it reveals that financial status of each of the surety has to be verified by the Magistrate. Records reveals that no such verification process is evidently placed on the file. Although the Dispatch Register is stated to have taken into recovery vide recovery memo ExpPW5/5 and the same memo mentions that no order of release was sent to the Jail from the Court of the JM-II on 23/10/2018. The Dispatch Register isn't placed on the file and it is also not clear as when the bonds were presented to the Jail and actually on which date the accused Jamal Shah was released. There is nothing present on the file as to how the jail authorities accepted the bail bonds and the release warrants if they were presented without the Dispatch Register. The I.O hasn't bothered to investigate jail authorities and the Muharrir of the Court of the JM-II to substantiate the criminality of the accused Hilal Khan. Nothing is present on the file that the accused Hilal Khan took the bail bonds and release warrants to the jail. Above all; the bail bonds are still intact and no one from the sureties have come forward to allege any foul play. Nothing is present on the file that they aren't the men of means or they haven't produced their revenue records with the bail bonds and most importantly, they haven't come forward until now that they aren't the sureties of the accused Jamal Shah.

81

**ATTESTED**

24  
 (Examiner)  
 District Court Peshawar

From the above discussion it becomes apparent and clear that the prosecution has failed to prove the bonds have been prepared and signed by accused Hilal Khan as no ocular witness is present on the file regarding his involvement in the instant case. No CCTV footage has been obtained by the I.O that accused Hilal Khan has illegally and without permission opened the drawer of the Court and stamped the bonds and release warrants. In his statement U/S 161 Cr.PC, he has stated that the bonds were presented to him by unknown persons and were already signed. Yet the signatures on the bonds and release warrants weren't forensically verified. His statement before the proceedings of the departmental inquiry can't be reckoned as confession or admission of his guilt but the I.O hasn't investigated in the lines of the statement of the accused U/S 161 Cr.PC especially when he has stated otherwise than his alleged confessional statement. The inquiry officer hasn't produced as a witness to verify or corroborate the statement of accused Hilal Khan before him. The USB containing the recording of the alleged confession of accused Hilal Khan has been stored in an undefined manner and has neither been verified forensically nor put before the accused in his statement U/S 342 Cr.PC to confront him with his image and voice. None of the sureties or their identifiers have been produced as witnesses and the impugned bail bonds are still intact. The only witnesses produced by the prosecution aren't admittedly the ocular witnesses against any of the accused. The prosecution has miserably failed to prove that the co-accused have taken a single step in the events leading to the offences in the instant case.

Having appreciated the evidence of prosecution from all dimensions and having applied the settled principles of appreciation of evidence, this Court arrived at the conclusion that the case of the prosecution is full of dents and loopholes and the same can't be the basis to convict any of the accused charged in the instant case. The prosecution has failed to prove the charges against any of the accused as articulated in the formal charge. Accused are therefore; acquitted from the offences/allegations U/S 419/420/468/471 PPC.

The sureties of the accused are discharged from the liabilities of their bail bonds.

**ATTESTED**

10/24  
 (Examined)  
 District Court Peshawar

Case file be consigned to the record room after necessary completion and compilation.

**ANNOUNCED**

16/01/2024

83

**SALMAN NADIR**

Judicial Magistrate-V,

Peshawar

**CERTIFICATE**

It is certified that this judgment consists of 21 (Twenty One) pages each page has been duly read over, corrected and signed.

**SALMAN NADIR**

Judicial Magistrate-V,

Peshawar

No.....	8760
Dated of Application.....	13/2/24
Name of Applicant.....	J. B. Khan
Pages.....	25
Signature of Copyist.....	MIL
Date of Preparation.....	13/2/24
Date of Delivery.....	13/2/24

**ATTESTED**

13 FEB 2024

()  
District Court Peshawar

No.....	
Date of Application.....	
Name of Applicant.....	
Word / Pages.....	
Signature of Copyist.....	
Date of Preparation.....	
Date of Delivery.....	