

IN THE HIGH COURT OF SINDH AT KARACHI.
Constitutional Petition No.S-904/2012

1. For hearing of CMA No.3873/2012

2. For hearing of Main Case

03.05.2016

Mr. Juzer Q. Pishori, Advocate for petitioner

M/s. Tahir Rahim and Ms. Musarrat Khan, Advocate for respondent .

ORDER

Muhammad Iqbal Kalhoro,J. Petitioner is tenant of Shop No.3, 32/F, M.A.M.C.H. Society Ltd. Karachi owned by respondents. Against the respondents the rent case bearing No.382/2000 was filed by the respondent predecessor-in-interest on the ground of default in personal bonafide use. The case was dismissed vide judgment dated 06.08.2012. The appeal preferred by the against respondents the said judgment was allowed vide impugned judgment.

2. The case of the petitioner is that he has not committed any default, as it is admitted position that up-to December 2008, he had given rent and was in possession of relevant receipts thereof. Regarding rent thereafter, his counsel claims that the rent was duly paid to the rent collector namely Asghar Ali, who was dully authorized to collect the rent for the month of June, February and March, but he was not issued any rent receipt in this regard. And when in May, 2009, he came to know about filing of rent case against him, he filed MRC and started depositing the rent, and in this regard he deposited rent from June to May 2009 collectively.

3. In regard to other ground of personal bonafide use, his counsel argued that in the cross examination of the respondents this ground was totally shattered as had come on record that

opponent had other premises also adjacent to present shop that was vacant for ten years and respondents had not resort to its use.

4. On the other hand, counsel for the respondents states that both the grounds were established, as the petitioner could not prove payment of rent of June, 2009

Applicant is not nominated in the FIR, but on the basis of statement of co-accused Saeedul Haque @ Abdullah, he was introduced in the prosecution story and was shown as absconder. Meanwhile trial has proceeded against the arrested co-accused namely Saeedul Haque and Muhammad Arshad, who have been convicted by the trial Court. Applicant was arrested in another crime on 18.03.2014, and was shown arrested in the present case on 26.03.2014.

3. Learned defence counsel has argued that case against the applicant is one of further enquiry, as neither his name appears in the FIR nor any role has been attributed against him. Insofar as conviction of the co-accused is concerned, he states that this is challenged in some appeal.

4. On the other hand, learned counsel for the complainant and learned A.P.G. have opposed the grant of bail to the applicant on the ground that applicant remained absconder for nine years. And he is not entitled for the concession of bail.

5. I have heard both the parties and perused the material available on record. Perusal of FIR shows that applicant is not nominated in the FIR. Applicant was implicated in this case on the basis of statement of co-accused Saeedul Haque, and he was shown absconder in the challan. It is clear that no specific role has been attributed against the applicant. The conviction of the co-

accused would not disentitle the applicant from concession of bail. As regards to the grant of concession of bail, it is well settled principle of law that mere abscondence would not come in the way to grant bail, if otherwise on merits his case requires further enquiry; applicant has earlier filed bail application bearing Cr. B.A. No.1614/2014, which was disposed of with the directions to the trial Court to conclude the trial within two months, it is obvious that within that period, the prosecution could not conclude the case. I am of the view that the case requires further inquiry and applicant is entitled to be grant of bail. Accordingly, applicant is granted bail subject to his furnishing a solvent surety in the sum of Rs.2,00,000/ (Rupees two hundred thousand only) with P.R. bonds in the like amount to be executed to the satisfaction of the trial Court.

JUDGE

Rafiq/P.A.