

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI.

Spl. Cr. Bail Appl No.1244 of 2015

Spl. Cr. Bail Appl. No.1245 of 2015

Spl. Cr. Bail Appl. No.1283 of 2015

Date	Order with signature of Judge
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27.04.2016.

Mr. Shaukat Hayat, Advocate

Mr. Anwar Mansoor Khan Advocate.

Mr. Muhammad Yaseen Azad, Advocate

Mr. Abid S. Zuberi Advocate.

Mr. Aamir Mansoob Qureshi Advocate a/w Mr. Ghulam Mustafa Saryo Advocate.

Mr. Salman Talibuddin Add. Attorney General for Pakistan

Mr. Muhammad Qasim, Standing Counsel

M/s. Abdul Ghafoor D.D. Forensic Saeed D.D. FIA

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MUHAMMAD IQBAL KALHORO J: By means of these applications, applicants are seeking post arrest bail in crime No.07/2015 registered by P.S. FIA Corporate Crime Circle Karachi for the offences U/s 420, 468, 471,472,473,474,477-A,109,34 PPC; sections 36 and 37 Electronic Transaction Ordinance, 2002; and section 3 and 4 Anti Money Laundering Act, 2010.

2. Briefly the facts are that an enquiry was initiated against M/s Axat (Pvt.) Ltd, Pakistan and its management by FIA, Corporate Crime Circle, Karachi. During which it was found that accused Shoib Ahmed Shaikh had established the said company and got it incorporated with Securities & Exchange Commission of Pakistan (SECP). Thereafter, he in collusion with the applicants started indulging in offering, preparing, selling and issuing fake and bogus diplomas, degrees, certificates and accreditation certificates of hundreds of fictitious schools, colleges and universities through fraudulent online system and thereby illegally minting millions of dollars. It is also alleged that the applicants had established fictitious and non-existent accreditation bodies that were used to portray fictitious accreditation certificates as if issued by genuine Universities/Schools/Colleges. In the inquiry incriminating material which includes fictitious and fake certificates, degrees, blank and filled accreditation letters, blank certificates/degrees, validation letters, different stamps, embossing machines used for committing the offence was recovered from the premises of M/s Axat (pvt) Ltd. It is also alleged in the FIR that at the pointation of accused Shoib Ahmed Shaikh from Administration Process Management Department hundreds of thousands of blank certificates of fictitious Universities were also recovered. Resultantly instant FIR was registered. And during investigation, the applicants have been arrested.

3. Learned defense counsel have mainly emphasized on following points in their arguments; that on the basis of a newspaper clipping sourced from some enemy agent of Pakistan cognizance of the matter was taken by FIA, the raid was conducted on the office of the Axat, its office was sealed, the material was seized and only after preliminary enquiry, the FIR was registered, which is therefore illegal; that applicants were not named in the FIR and in subsequent reports of the investigation, although their names appear, but no active role is assigned to them; that entire material was taken by FIA officials on 18.05.2015, and then it was manipulated into alleged evidence against the applicants; that the recovery of alleged material, that is, transcripts, Hard Disks Drives and recordings, shown as evidence against the applicants, has not been witnessed by any independent person; that alleged phone-recordings of applicants secured during investigation cannot be relied upon as the persons on the other side of the phone have not been examined to lay any credence to such recordings; that the manipulation and contrivance of all such material in the circumstance cannot be ruled out; that alleged forensic experts who have analyzed alleged samples of voices and have given reports are not shown to have any such expertise in the field; that the alleged material has not been analyzed by any independent forensic expert and is therefore not reliable; that FIA is interested party and is acting under the influence of Jeo News group which is evident from 164 statement of prosecution witness namely Umair Hamid; that the memos of recovery are contradictory to each other and their entries are different; that the accusations against the applicants mentioned in the supplementary challan are different to ones leveled against them in the final challan; that recovery memos are shown to be prepared in presence of the Magistrate but there is no signature of the Magistrate thereon; that there is no complainant of the offense and no alleged victim has come forward to support allegations of cheating and extortion; that no witness has implicated the applicants; that the alleged offense does not fall within prohibitory clause under section 497 (1) Cr. P. C; that the allegations against the applicants are of removing material from the office at the instance of CEO (Shoib Ahmed Shaikh), which is no offence at all; that no incriminating material qua allegations against the applicants has so far been collected; that the matter is still in investigation as is evident from the final challan and the applicants therefore cannot be detained in jail indefinitely till any incriminating evidence is collected against them; that in similar situation and against same set of allegations learned Additional Sessions Judge-IV Islamabad has granted bail to the employees of Axact; that the

applicants are mere employees and not the beneficiaries; that the applicants are in custody since their arrest but no progress in the trial has been made . It has also been argued that basic rule is bail and not jail. Mr. Abid Zuberi learned counsel for applicant Zeeshan Anwar in addition to above grounds has stressed on the ground of ailment of his client. The citations relied upon in support of such contentions are reported in 2016 SCMR 18 2004 SCMR 1859, 2016 SCMR 274, PLD 2016 Lahore 130, 2012 SCMR 1732, SBLR (Sindh) 922, and PLD 2005 (Kar) 128.

4. On the other hand, Mr. Salman Talubdin Leaned Additional Attorney General has contended that this is not an ordinary offence, and this is the largest investigation ever undertaken by FIA; that the offense has been committed sophisticatedly by computer ace people and the evidence is available in hard-drives of computers recovered from the office, which contain volumes of information showing modus operandi of the applicants to deceive innocent people and to make money. According to him, the applicants in various capacities used to work jointly and severally in attracting innocent people by offering them degrees of fake and fictitious colleges and Universities, and after selling them such degrees against huge amounts, they would blackmail them to extort more money on the name of legalizing and accrediting their degrees. Explaining this point, learned AAG states that the applicants would make calls to the students, to whom the degrees were already sold, as if from embassy staff of a given country and demand money for verifying and accrediting their degrees and on refusal they would threaten to cancel their registration and deport them back to their country. In support of his contention, he has played out some of the recordings of such conversations between the applicants and the alleged victims, which are saved in cell phones and laptops. He has then referred to laboratory reports verifying similarity in the voice of the applicants taken as sample in the investigation with the one retrieved from the computers to highlight active role of the applicants in the crime. He has further contended that applicants are not simply employees but privy to the crime and have earned wrongful gains. In this regard he states that the applicants used to be given equal amount in Pakistani rupees which they would earn in US\$ dollars by selling fake degrees. He also informs that on about 2000 computers the applicants with the help of their staff kept conducting such activities round the clock, and then processed such information and stored it in the main server with which all the computers were connected. He next states that all such information has further been saved in the Cloud by the applicants and in all 103

terabytes of encoded information has been retrieved, which is being analyzed, deciphered and decrypted. He further states that if the applicants are released on bail, they within half an hour with the facility of a laptop and an internet connection could cause disappearance of entire information from the Cloud and main server as they have the necessary passwords and keys in their memory. He has also explained why the matter has never been reported by any victim, it was due to a scheme of refunding the entire amount to a suspicious and complaining student, and, according to him, the trail report of entire amounts so refunded has been prepared and made part of the case. He has also pointed out to the perks, privileges and salaries in lacs which the applicants used to draw and their lavish life-style unmatched with their purported position of sales agents etc which, according to him, is strong circumstantial evidence to indicate that they were not merely employees but the beneficiaries as well. He also states that allegations of fraud, extortion and cheating against the applicants are established by mammoth earning of the Axat, which is not accounted by known source of income. He has relied upon the case laws reported in 2009 P.Cr.L.J 1192 and 2015 P.Cr.L.J 1772 in support of his arguments.

5. I have heard the parties. As has been mentioned in the preceding paras, the case of the prosecution is based on the information, retrieved from the computers, and the alleged material, that is, fictitious certificates, degrees, blank and filled accreditation letters, blank degree certificates, different stamps, and embossing machines recovered from the office of Axat. The applicants are said to be working there and have not denied this fact. Their case, however, is that they are only employees working against salary and have nothing to do with the allegations and there is no material against them. This, however, does not appear to be the case. As per precise allegations against 4 applicants namely Muhammad Rizwan, Atif Hussain, Imran and Adnan Mansoor in bail application No.1244/2015, they after the publication of scam in New York Times, removed incriminating material e.g. Hard Drives, Tape Cartridges, SATA Hard Drives etc. from the office of Axat and concealed the same in their homes wherefrom it was recovered. Applicant Muhammad Rizwan, was working a senior manager. In the Hard Disks recovered from him CRM (Customers relationship management) system was found which is said to be main software used to run and operate business of education. He is also said to be custodian of "voxbeam" software used to change and hide identity of caller on CLI to deceive the listener and from his computer fake degrees were also recovered. Applicant Atif Hussain was working as Software Architect. On analysis of

the material recovered from him information about shipment database containing record of students, copies of degrees etc., and data of online universities/schools and information of fake domain purchase, payment sites and merchant accounts were retrieved. Hard Disk Drives recovered from applicant Imran contain incriminating material about fake degrees. He was working as vice president software and is alleged to have developed software projects under the supervision of applicant Zeeshan Anwer which have information about students, who were given allegedly fake degrees. And Hard Disc Drives recovered from applicant Adnan Mansoor allegedly contain incriminating material about fake degrees, list of students and documents of States department. He is alleged to have developed software in the capacity of Vice President Software under the supervision of accused Zeeshan Anwar. These applicants belong to Administrative Process Management Department of Axat that is responsible for printing degrees and developing fake digital signatures of Vice Chancellor of the Universities. Learned AAG in his arguments has not only referred to such material but also to Forensic Expert reports, who have examined all the material, to establish connections of the applicants with the recovery. He has shown transcripts of e-mails sent to students bearing the names of applicants.

6. Applicant Zehan Anwar in bail application No.1283/2015 was Associate Vice President/Head of Software Department and was also head of department of internal audit which allegedly would refund amount to those students who raised any suspicion. Allegedly he created false and fraudulent accreditation bodies pretending as established and credible International Accreditation Organizations which provided illegal service of providing not only fake degree certificates but back dated degrees with fake accreditation. He is also alleged to have developed in connivance with other accused sophisticated calling systems which would hide caller ID and portray him as embassy staff to the listener. He is alleged to monitor extortion known as up-sale from the students on the ground of getting their degrees legalized. He is also alleged to give increments and promotions to the staff who could extract more money from the students. During arguments, learned AAG has pointed out to such material and forensic reports to establish his connection.

7. In investigation, regarding applicants namely Fahad Ansari, Muhammad Adnan, Murad Akhtar and Vivan Christopher Canpos in bail application No.1245/2015, it has come on record that they would disguise as embassy staff of a particular country and contact with the students to whom already the fake degrees were issued and demand

more money from them for getting their degrees legalized and verified and in case of their refusal they would threaten them of cancelling their registration and deporting them back to their native country. Of all such information gathered from the computers, the transcripts and documents have been prepared and made part of the case. Applicant's voice recordings and voice transcripts were secured in the investigation and have been analyzed by the forensic experts with the samples of their voices taken in investigation and such reports are also made part of the case. Some conversations have been played out by learned AAG in the court and transcripts read and shown. In rebuttal it has been stressed by the defense counsel that such material could not be relied upon, it is inadmissible in law and its authenticity is not without doubt. They have also alleged partiality against the FIA in preparing such record. The Forensic Expert's reports establishing prima facie connection of the applicants with the offence cannot be doubted because they have been prepared by FIA. It has not been stated by defense counsel that FIA officials have any enmity or ill-will against the applicants to falsely implicate them. Prosecution case is based on the allegations that an online system to sell fake degrees of fake Universities was being run by the applicants and in this regard every piece of evidence is available in Hard Discs Drives, CDs etc., which have been analyzed by the experts. In terms of article 164 of Qanun-e-Shahadat Order, 1984 collection of evidence through modern devices is relevant and it is admissible. Admittedly its authenticity at bail stage can neither be determined nor doubted. It has furnished, *ex facie*, a link connecting the applicants with the allegations and therefore it has to be considered to that extent only. A deeper assessment of the alleged material cannot be undertaken and at this stage it cannot be held that the entire material is without any incriminating piece of evidence. The applicants have not denied their association with the Axat charged with selling fake degrees, and it is not their case either that they were selling genuine certificates of the genuine and registered universities with due accreditation and authorization or they were not selling any certificates at all. This is alleged to be a white-collar crime and appears to have been committed adroitly by the people who are computer-savvy. Allegedly information so far retrieved from the computers is so huge that still the process of decoding and deciphering it is going on, therefore apprehension of learned AAG that if the applicants are released on bail, they are likely to erode and erase entire information from the Cloud and main server does not appear to be ill-founded and such chance cannot altogether be ruled out. This court while deciding the bail applications cannot refuse to take a note of all the above facts.

8. As regards to the ground urged by the defense counsel that the offense does not fall within prohibitory clause under section 497 (i) Cr.P.C and in such like cases bail is rule and its refusal exception, it may be said that it is not a hard and fast rule that is to be followed in every criminal case. Every criminal case has its unique character and facts and thus has to be decided strictly in the light of those facts. Needless to state that in non-bailable offences, bail is not right of the accused. When the accused is asking for concession of bail, he has to show that there is no evidence at all to connect him with the offense, or the evidence is such that it requires further enquiry into his guilt. In the present case, as discussed above, sufficient material connecting the applicants with the commission of the offense is available on the record. Regarding medical ground of applicant Zeeshan Anwar, it may be observed that there is nothing on record to show that his detention in jail is detrimental to his life or his treatment in the jail is not possible. Learned defense counsels have relied upon a host of decisions in support of their arguments, the facts and circumstances of all such cases are entirely different to the ones in hand.

11. No case for bail in favour of the applicants in the facts and circumstances is made out. Accordingly, these applications are dismissed. The trial court is however is directed to expedite process of the trial. Needless to say the observations herein above are tentative in nature.

Office to place copy of this order in the connected bail applications.

JUDGE

A.K.