

Not for Reporting
**IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. B.A. No.S-978 of 2016.

Muhammad Khalid

Versus.

The State.

Applicant : Muhammad Khalid	Through, Mr. Shaukat Ali Pathan, Advocate.
Respondent : the State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing	06.04.2017.
Date of order	07.04.2017.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.- This application has been filed by Muhammad Khalid for the grant of post arrest bail. The brief facts of the case as per FIR 56/16 U/S 407, 34 PPC registered at PS Kunri are that on 01-05-2015 toria in sacks weighing 17765 KG were loaded in truck No.MNL-416 from the peddy of Sheeren Khan Bustan Road Kunri for delivery at Rehman oil mill Sukkur which was driven by the applicant. This truck however never reached its destination and the goods which it were carrying which amounted to 380 bags of oil seed weighing 17765 KG valued at RS1,00,00,00 was misappropriated and hence the applicant being driver of the truck was arrested under S.407 PPC.

2. After usual inquiry and investigation the matter was challoned and the applicant was sent up for trial.

3. Learned counsel for the applicant submitted that the applicant was completely innocent, that there was a 12 day delay in filing of the FIR which was unexplained, that the recovery made from the applicant had been foisted on him, that the offense fell within the non prohibitory clause; there was insufficient material to link him to the commission of the offense; that he had been in custody for 8 months and for all the above reasons he should be granted post-arrest bail. In

support of his contentions he placed reliance on the case of **Tariq Bashir V State** (PLD 1995 SC 34)

4. On the other hand learned APG opposed the grant of bail. According to him the delay in the registration of the FIR had been on account of the owners of the oil seed bags searching for the applicant who had disappeared with the goods; that the applicant had confessed to the crime and had taken them to his house and handed over to the police RS 500,000 which was his share of the sale of the sold goods and that there was more than sufficient evidence to link him to the commission of the offense.

5. I have heard the learned counsel for the applicants, APG, perused the record, considered the relevant law and the case law cited at the bar.

6. As per settled law I have only made a tentative assessment of the material placed before me and this order shall not prejudice the case of any party at trial which shall be decided by the trial court on merit based on the evidence before it.

7. Firstly I note that the applicant's application for post arrest bail was dismissed by the trial court by order dated 29-09-2016 and hence the applicant has now approached this court for post arrest bail.

8. In my view although there *may* be material on record which tends to connect the applicant to the offense charged there are other factors which need to be taken into account in this case. For example, the delay in registering the FIR, the admissibility of the recovery memo and the relatively small amount involved i.e. 10 lacs of which 5 lacs has already been recovered. The most important factor however in my view is that S.407 PPC being a criminal breach of trust by either a clerk or servant provides a maximum term of imprisonment up to 7 years and as such it does not fall within the prohibitory clause and based on the facts and circumstances of the case there seem to be no aggravating factors which may elevate the crime into one of a special status such as a crime against society which would stop the general rule in **Tariq Bashir's case** (Supra) from applying namely that in cases which fall within the non prohibitory clause bail was to be granted as a rule and refused only in exceptional cases. Furthermore, the applicant is not required for any further investigation, he has been in custody for approx 8 months and it appears that only the charge has been framed and evidence not as yet lead and the other co-accused is on bail. The State has also not raised the fear that the applicant may abscond or may interfere with witnesses.

9. As such based on the particular facts and circumstances of the case I hereby grant post arrest bail to the applicant subject to him furnishing solvent surety of RS 200,000 and PR bond in the like amount to the satisfaction of the Additional Registrar of this Court. However, the trial Court is directed to complete the trial within 4 months of the date of this order. The office shall transmit a copy of this order to the concerned trial court for compliance

Hyderabad.

Dated: 07.04.2017.