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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 240 of 2017.
Crl. Bail Appln. No. S- 262 of 2017.
Date of hearing 11.08.2017. Order with signature of Judge

Mr. Ashfaq Hussain Abro, Advocate for applicants.
Mr. Sardar Ali Rizvi, D.P.G.

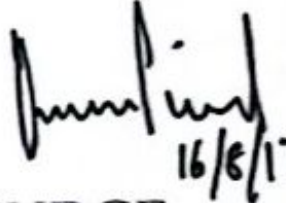
Omar Sial, J: This common order will dispose of both the captioned bail applications.

Brief facts of the case are that on 27.05.2017, one Muhammad Awais lodged a FIR at P.S. Anti-Corruption Establishment, Larkana, stating therein that he is a farmer and that his brother Azizullah is a clerk in TMA Lakhi Ghulam Shah in District Shikarpur. He further stated that his brother Azizullah had not been paid his salary for the period 2015-2016 and that Applicant Fayyaz Hussain Channa, who was an Accountant in the office of the TMA Lakhi Ghulam Shah had demanded an illegal gratification of Rs.250,000/- for the release of the salary amount not paid to his brother. The complainant paid Applicant Fayyaz Hussain Channa an amount of Rs.200,000/-, whereas Fayyaz asked him to give the remaining Rs.50,000/- to Applicant Hanif Ahmed Abro. After negotiation it was agreed between the parties that the complainant would pay an amount of Rs.10,000/- to Hanif immediately while the balance Rs.40,000/- would be paid by him at a later date. A FIR bearing number 02 of 2017, under Sections 161 and 34 PPC read with Section 5 (2) of the Prevention of Corruption Act-II of 1947 was registered against the two Applicants. A trap was organized and Applicant Hanif was arrested after he had received the tainted money.

I have heard the learned counsel for the Applicants as well as the learned DPG and have also scanned the record with their able assistance. My observations are as follows. 

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1. While the complainant has lodged the FIR on the grounds of corruption, he seems to have forgotten that the fact he sought out the Applicants and agreed to pay the illegal gratification is an act that in itself is reprehensible.
 2. There is nothing on the record at the moment to show whether any amount was due to the brother of the complainant as salary and if it was what the outstanding amount was; why did the brother choose to not himself be the complainant or whether he made any legal and lawful efforts to receive his outstanding salary. As a matter of fact, there is nothing on record to show that the said Azizullah was even a clerk of TMA Lakhi Ghulam Shah; on the contrary there is a letter in the record written by the Town Officer, Town Committee Lakhi dated 03.6.2017 to the Secretary Local Government, in which the Town Officer has stated that the said Azizullah is not an employee of that TMA.
 3. The trap report against Applicant Hanif, at the moment, needs to be put to the test of cross-examination to determine whether the members of the raiding party had heard the conversation between the complainant and Applicant Hanif and seen the bribe money being passed to the accused. Reference in this regard may be made to case of *Bashir Ahmad Vs. The State* (2001 SCMR 634).
 4. The FIR lodged by the complainant shows time of occurrence of the incident as "2015-2016". This fact prima facie appears to be odd as the complainant's case is not of an ongoing offence.
 5. An offence under Section 161 P.P.C is a bailable offence, whereas that under section 5 (2) of the Prevention of Corruption Act-II of 1947 does not fall within the prohibitory clause of Section 497 Cr.P.C. In the circumstances of the present case, the case of the Applicants is one of further enquiry. 

Above are the reasons for my short order of 11.8.2017; in terms of which the interim pre-arrest bail granted to Applicant Fayyaz Hussain Channa on 14.6.2017 by this Court was confirmed on the same terms and conditions, whereas Applicant Muhammad Hanif Abro was admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs.100,000/- and a P.R. Bond in the like amount to the satisfaction of the trial Court.


16/8/17
JUDGE