

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appn. No.S- 186 of 2019.

Date

Order with signature of Hon'ble Judge

For hearing of bail application.

26.12.2019.

Mr. Safdar Ali Ghouri, advocate a/w the applicant.

Mr. Muhammad Noonari, D.P.G.
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Through this bail application, applicant Imtiaz Ahmed seeks pre arrest bail in Crime No.21 of 2019 of P.S ACE Shikarpur, registered for an offence under Sections 467, 468, 477-A PPC r/w Section 5(2) Act-II of 1947, after rejection of his bail plea by learned Special Judge, Anti-Corruption (Prov) Larkana vide order dated 29.3.2019 instant bail application has been filed.

Since the facts of the case are already available in the FIR which is brought on record, hence no need to be reproduced again.

Learned counsel for the applicant submits that the allegation, as per FIR against the applicant is that, he kept Entry No.66 dated 15.7.1997 and thereby had committed forgery in collusion with co-accused/beneficiary Ali Hassan. While referring to the documents/ Entry No.66, he points out that he had kept said entry upon the letter issued by Manager ADBP Garhi Yasin for mortgage of disputed land in favour of ADBP upon pass book which was issued by the then Mukhtiarkar dated 13.1.1991. He next submits that forgery if any was committed by someone else who kept Entry dated 13.01.1991 and subsequently issued Pass Book in the name of Ali Hassan; however, he had valid letter and record which was made available before him on record. He further submits that the Mukhtiarkar and Tapedar who had

committed forgery had not been arrayed as accused or even witness therefore, the prosecution case is instituted against the applicant only to malign his reputation. He further submits that applicant is a Govt. Servant, therefore, question of his absconding or tampering with the prosecution evidence does not arise nor he would abscond away. He further submits that entire evidence of the prosecution is based upon documents which rests with the prosecution itself hence case against the applicant requires further enquiry and prays for confirmation of bail of the accused. In support of his contentions he has placed reliance upon following cases:

1. Muzamil Riaz v. The State (2010 MLD 1971).
2. Saeed Ahmed v. The State (1996 SCMR 1132).

Learned D.P.G opposes the bail application on the pretext that applicant being custodian of record of rights had committed forgery besides he is nominated in the FIR with active role, hence he does not deserve any leniency in shape of extra ordinary relief. Learned D.P.G could not controvert the fact to the effect that the original-cum-mother entry which was kept in revenue record of rights on 13.01.1991 and the then officials including Tapedar as well as Mukhtiarkar, who subsequently issued Pass Book to the beneficiary were not made as accused in this case and even investigating agency did not extend the scope of investigation to ascertain the truth.

Heard arguments and perused the record. Admittedly the applicant is named in the FIR with the allegation that he allegedly kept Entry No.66 dated 15.7.1997. Such copy of entry has been produced by the counsel for the applicant under cover of his statement dated 23.8.2019. Perusal of said document reveals that the applicant kept Entry NO.66 upon the letter dated 14.7.1997 issued by the then Manager Agricultural Development Bank of Pakistan, Garhi Yasin Branch duly forwarded by Mukhtiarkar concerned in respect of the

mortgage of the property viz-a-viz disputed survey numbers mentioned in Pass Book No.541807 in favour of the Agricultural Bank. Record further reveals that the said Pass Book was issued to the beneficiary Ali Hassan by the then Mukhtiarkar and Tapedar of the Beat on 13.01.1991 and complainant has failed to mention the original entry upon which basis alleged fraud is said to have committed. The applicant present before the Court admits that he kept the entry in question and further submits that said entry does not meant for any forgery and original entry, if any, was kept/managed by other revenue officials in the year 1991 who had not been made as accused nor even they have been examined by the I.O during investigation or enquiry.

Second plea of the counsel for the applicant is that offence pertains to the year 1997 and enquiry was conducted by the Anti-Corruption Police in the year 2015 whereas the instant FIR has been registered on 18.01.2019 i.e. there is delay of 22 years from the date of offence and four years from the date of enquiry. Even no specific date and time, on which date the original fraud/alleged forgery was conducted, has been mentioned in the FIR. The delay in criminal cases particularly in lodgment of FIR has always been held fatal by the superior Courts for prosecution. Reliance in this regard can be placed upon the case of Ayub Masih v. The State (PLD 2002 SC 1048). The applicant being a Govt. Servant may not abscond away or tamper with prosecution evidence which is in possession of the prosecution.

In the wake of above discussion, I am of the considered view that the conditions prescribed for grant of pre arrest bail by the hon'ble Supreme Court of Pakistan in the case of Rana Muhammad Arshad v. Muhammad Rafique and others (PLD 2009 SC 427) are fully attracted and satisfied, therefore, applicant has made out a good *prima facie* case for confirmation of bail. Accordingly, instant bail application is allowed. Interim pre arrest bail granted to the applicant vide order dated

09.4.2019 is confirmed on the same terms and conditions with direction to the applicant to continue his appearance before learned trial Court till final disposal of the case.


JUDGE

shabir