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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Cr. Bail Appln. No.S-188 of 2019
1st Cr. Bail Appln. No.S-394 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
30.12.2019.	

Mr. Mohammad Azeem Soomro, advocate for applicants Nihal Khan alias Nihaluddin Brohi, Ghulam Ali Arbani and Lal Bux Arbabni in Cr. Bail Appln. No.S-188 of 2019, along with the applicants.

Mr. Sheraz Ahmed Sheikh, advocate for applicant Abu Bakar Pathan in Cr. Bail Appln. No.S-394 of 2019, along with the applicant.

Mr. Mohammad Noonari, DPG.

By this common order, I intend to dispose of both the captioned bail applications, as common question of law and facts are involved and both the applications are filed in one and same crime.

2. Applicants Nihal Khan alias Nihaluddin Brohi, Ghulam Ali Arbani, Lal Bux Arbabni and Abu Bakar Pathan seek pre-arrest bail in Crime No.06 of 2019, registered at Police Station ACE, Jacobabad, for offence under Sections 467, 468, 420, 471, 34, PPC read with Section 5(2) Act-II of 1947, after their plea for pre-arrest bail has been turned down by the learned Special Judge, Anti-Corruption (Prov.), Larkana vide single order dated 01.04.2019.

3. Facts of the case are already mentioned in the FIR, therefore, there is no need to reproduce the same.

4. The learned Counsel for the applicants submit that allegation against applicant Nihal Khan is that he allegedly issued fake 'Sanads' in favour of co-accused/beneficiaries and such entries were kept by him in the revenue record of rights viz. Deh Form No.II concerned, hence he has been arrayed as accused. He next submits

that the alleged entries in the revenue record vis-à-vis alleged fake 'Sanads' were made in the years 1990-91, whereas applicant Nihal Khan alias Nihaluddin has never remained posted as Tapedar during the given period, hence the Circle Officer/investigating officer of the case has malafidely arrayed him as an accused. As far as co-accused/beneficiaries are concerned, he submits that 'Sanads' were issued by Mohammad Haroon Memon, the then Deputy Commissioner, Jacobabad and subsequently on an application moved by the department, the said granting order was recalled by means of order dated 04.07.2009 by the then defunct EDO Revenue, Jacobabad. He further submits that entire evidence of the prosecution is based upon documents, which is in possession of the prosecution itself, hence considering the delay in lodgment of FIR, according to him, which is for considerable time, the applicants may be granted bail, as their case requires further enquiry.

5. On the other hand, learned DPG opposes the bail applications, on the pretext that applicant Nihal Khan being Tapedar of the beat by misusing his official capacity had kept entries in the revenue record and thereby issued fake 'Sanads' in favour of the co-accused/beneficiaries, therefore, he is not entitled for extraordinary concession of pre-arrest bail. So far delay in lodgment of the FIR is concerned, he admits that there is no explanation. As far as the then Deputy Commissioner, Jacobabad (Mohammad Haroon Memon), who had allegedly issued 'Sanads', has not been made party to the proceedings or as an accused in this case.

6. Heard arguments and perused the record.

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7. Admittedly, the incident pertains to the years 1990-91 and enquiry was conducted in the year 2011, which resulted in registration of present FIR on 19.01.2019. The delay so occasioned in lodgment of FIR is not explained. The delay in lodgment of FIR has always been held as fatal for the prosecution. Reliance can be placed on the case of *Ayub Masih v. The State* (PLD 2002 SC 1048). Moreover, the case has been challaned by the police, which is now pending adjudication before the Court concerned and the applicants have never misused the concession of ad-interim pre-arrest bail already extended to them. The evidence whatever has been collected by the investigating officer during investigation is of documentary nature, which is in custody of the prosecution, hence question of tampering with the evidence does not arise. Besides, the punishment provided by the law for the sections applied in the FIR does not exceed the prohibition contained in Section 497(1), Cr.P.C. In such circumstances and in view of above, the case of the applicants is covered by subsection (2) of Section 497, Cr.P.C, hence these bail applications are allowed and the ad-interim pre-arrest bail already granted to the applicants is hereby confirmed on the same terms and conditions. The applicants are directed to appear before the trial Court.

JUDGE

Qazi Tahir PA/*