

HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 754 of 2016

Date	Order with signature of the Judge
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APPLICANT : Sheraz through Mr. Muhammad Rais Khan Advocate

RESPONDENT : The State through Mr. Muhammad Javed, K.K. Standing Counsel a/w S.I. Amir Akbar and Inspector Legal, FIA Mirza Tanveer Ahmed

Date of hearing : 02.08.2016

Date of Order : 02.08.2016

ORDER

Muhammad Humayon Khan, J:- After rejection of his earlier bail application, vide Order dated 18.05.2016, passed by the learned Sessions Judge, Malir at Karachi, in Bail Application No. 481 of 2016, the applicant/accused Sheraz S/o Ali Bhai has approached this Court seeking post-arrest bail in Crime No. 127 of 2016, registered at Police Station FIA, AHT Circle, Karachi, under Sections 420, 468, 471 and 109 PPC and Sections 3 (2), 13 and 14 of Foreigners Act 1946 and Sections 3 and 4 of Foreigners Order 1951.

2. Brief facts of prosecution case, per FIR are that consequent upon enquiry No.169/2016, it transpired that the applicant was offloaded while proceeding to Mozambique through JIAP Karachi via Flight No. QR-605 on the strength of Passport No. AE-5127954 dated 03.03.2016 with old Passport No. AE-5127953 with remarks that page No. 13 of old Passport

referred above was suspected to be forged. During preliminary enquiry, applicant failed to furnish plausible explanation regarding obtaining multiple visa for Mozambique. Thereafter, the case was registered inter-alia on the above facts.

3. I have heard the learned counsel for the applicant as well as the learned standing counsel and perused the material available on record.

4. Learned counsel for the applicant has mainly contended that the applicant is innocent and he has been falsely implicated in this case by FIA authorities due to malafide intention. He has further contended that the applicant/accused is a bonafide and law abiding citizen of Pakistan and has plethore documents, which shows that the applicant is Pakistani national, residing at Karachi alongwith his family consisting of his wife, one year old child, father and mother. He further contended that the father, mother and wife of the applicant have also obtained their CNIC from NADRA, which clearly show that the applicant is Pakistani national and in view of authenticate documents, Sections-3 (2) 13, 14 of Foreigners Act 1946 and Sections 3 and 4 of Foreigners Ordinance 1951 are not attracted. He further contended that the offences with which the applicant is charged, are punishable to maximum sentence of five years and not hit by the prohibition contained in Section 497 Cr. P.C., therefore, bail in such cases is normally not refused. In support of his contentions, the learned counsel for the applicant has relied upon the following case laws:-

- i) Saeed Ahmed Vs. The State (1996 SCMR 1132)
- ii) Muhammad Yousaf Vs. The State (1995 P.Cr.L.J. (Karachi) 1348)
- iii) Mir Jan Vs. The State (2003 P.Cr. L.J. (Karachi) 1903)
- iv) Abdul Qayoom Vs. The State (2010 MLD (Karachi) 1251)
- v) Gul Ahmed Vs. The State (2012 P.Cr. L.J. (Sindh) 679)

5. Learned counsel appearing for the State has opposed the bail application and contended that the applicant/accused is not Pakistani national but entered into the territory of Pakistan through India in violation of the provisions of Section 3 (2) (a) of the Foreigners Order, 1959, which is an offence under Section 14 of the Foreigners Act, therefore, he is not entitled to the concession of bail. However, he has not cited any case-law in support of his arguments.

6. I have carefully gone through all the case law referred to by the learned counsel for the applicant.

7. It has been held by the Hon'ble Supreme Court in the case of Saeed Ahmed Vs. The State reported in 1996 SCMR 1132 that:-

“The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. The objection of the learned counsel regarding addition of section 409, P.P.C. may carry some weight while considering the bail, application. As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, in the circumstances, we convert the petition into an appeal and allow it, and grant bail to the petitioner on furnishing one surety in the sum of Rs.50,000 to the satisfaction of the Deputy Registrar, Supreme Court, Lahore.”

8. It has been held by the learned Judge of this Court in the case of Muhammad Yousaf Vs. The State reported in 1995 P.Cr. L.J. (Karachi) 1348 that:-

“The applicant also holds a Pakistani Passport, which is issued on 28-6-1994 and National Identity Card, which is issued on 14-12-1988. In presence of this documentary evidence it shall have to be seen by the learned trial Court if such documents are genuine or otherwise. The case of the applicant in the circumstances is of further inquiry and I am inclined to grant him bail.”

9. It has been held by the learned Judge of this Court in the case of Mir Jan Vs. The State reported in 2003 P.Cr. L.J. (Karachi) 1903 that:-

“It is a well-settled principle that when an accused is charged under two different statutes or laws, then he can only be tried for offences under the law, which provides lesser sentence provided that the offences are alike or similar in nature.”

10. It has been held by the learned Judge of this Court in the case of Abdul Qayoom Vs. The State reported in 2010 MLD (Karachi) 1251 that:-

“I have considered the submissions made by the learned counsel. Learned counsel for the applicant relied upon Muhammad Yousaf v. The State 1995 P.Cr.LJ 1348, wherein a single Judge of this Court had held that since the applicant had held Pakistani Passport and National Identity Card genuineness or falsehood of such documentary evidence could be determined by the trial Court after the trial and case of the accused was held as one of further inquiry. Bail was consequently allowed. Learned counsel further relied upon Muhammad Siddique v. The State, 2007 YLR 697. This was a case of Pakistani citizen allegedly using passport of another person by changing name and photograph. It was held that until report was received from issuing place of passport, involvement could not be determined. This case is obviously distinguishable.”

It has been further held that:

“In the present case it is not alleged that CNIC was a forged document. What is alleged that it has been obtained while giving fraudulent information. Investigating Officer has showed me a paper which he had stated was downloaded from NADRA website which says that CNIC had been withdrawn and cancelled. However he was unable to say anything whether any show-cause notice was issued to the present applicant or he was heard before cancelling CNIC or any other inquiry was conducted in this regard. He frankly stated that he had no material with him in this regard. **When asked question as to what action if any was taken against the concerned official of NADRA who allegedly issued CNIC or passport to a person who according to him is not a Pakistani National, the learned Standing Counsel, except saying that matter has been referred to NADRA, was unable to say anything further.**

When a person is accused of having committed a crime which he could not commit without either involvement of duping of State functionary unless such role of the State functionary is also on record and if circumstances so warrant, no action has been taken against the State functionary, it is unfair to prosecute helpless citizens only.

The applicant has also produced photocopies which he claimed to be CNIC of his father issued to him in 2002 as well as NIC allegedly issued to him in 1974. This therefore, obviously is a case of further inquiry.”

11. It has been held by the learned Judge of this Court in the case of Gul Ahmed Vs. The State reported in 2012 P.Cr. L.J. (Sindh) 679 that:-

“It is seen from the record that the applicant/accused was having an NIC and passport since. 1991 which has not been controverted by the learned D.A.-G. or the Inspector of the FIA. It is also an undeniable fact that the passports issued to the applicant/accused were time and again renewed and at no point of time the applicant/accused was declared to be an Afghan national. It is only on 7-5-2011 that when the applicant/accused arrived from Dubai (UAE) that he was apprehended on the ground that during immigration the

particulars entered into PISCES Data Base System has not confirmed his NICOP.

In view of what has been stated above, in my opinion, this is a fit case of further inquiry and the applicant is entitled to be enlarged on bail.

12. After analyzing all the above referred reported Judgements, I found that the following principles of law for grant of bail have been settled:-

- i. Where the case entirely depends upon documentary evidence which seems to be in possession of the prosecution, the question of tampering with the evidence does not arise and it is a case of further inquiry and therefore bail should be granted;
- ii. Where an accused is charged under two different Statutes or laws then he can only be tried for offences under the law, which provides lesser sentence provided that the offences are alike or similar in nature;
- iii. Where a person is accused of having committed a crime which he could not commit without either involvement of duping of State functionary unless such role of the State functionary is also on record and if circumstances so warrant, no action has been taken against the State functionary, it is unfair to prosecute helpless citizens only;
- iv. When question to the national status of the accused requires inquiry particularly in the circumstances when accused produced series of documents to establish his nationality, the accused is entitled to enlarge on bail.

13. In the present case, the applicant has produced his birth registration certificate, certificate of domicile, character certificates from schools, mark sheets, CNIC of his family and Nikkahnama. These documents have neither been challenged uptil now nor controverted by Standing Counsel or FIA Officer. In response to query from the learned Standing Counsel as well as the officers of FIA present in Court regarding the authenticity

of these documents, they failed to furnish satisfactory reply regarding the said documents except that the FIA had written letters to the concerned departments and send the documents for verifications but reply is still awaited. However, copies of such letters have not been brought on record by the prosecution. Accordingly, on the tentative assessment of facts and circumstances of the case, I am of the considered view that the matter squarely falls within perview of further inquiry as the FIA Authorities are still seeking verification of the documents and not clear about the citizenship of the Applicant.

14. This bail application was allowed and the applicant was released on bail subject to furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Lacs Only) and P.R.Bond in the like amount to the satisfaction of the Nazir of this court by short order dated 02.08.2016 and the above are the reasons for the said short order.

15. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case of the applicant/accused on merits.

J U D G E