

IN THE HIGH COURT OF SINDH AT KARACHI

**Cr. Bail Application No. 330 of 2017**

Applicant : Iftikhar Gadar, son of Abdul Razzaq Gadar through M/s Faraz Fahim and Masood Ali Memon, Advocates

State : Mr. Muntazir Mehdi, DPG.

Complainant : Nina Khan through Mr. Kashif Hanif, Advocate.

Date of hearing : 04.07.2017

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**ORDER**

**ADNAN-UL-KARIM MEMON, J.** – The Applicant namely Iftikhar Gadar son of Abdul Razzaq Gadar is seeking bail before arrest in F.I.R. No.386/2016 registered for offences under Section 408, 468 471,420 and 34 P.P.C. at Police Station Metha Dar, Karachi.

2. The case of prosecution is that on 22.11.2016 Mrs. Nina Khan, wife of Muhammad Babar lodged FIR under Section 408, 468 and 471 P.P.C. Subsequently Section 420 P.P.C was added in the charge sheet, with the allegation of manipulation of accounts, misappropriation of premiere Insurance Company funds in millions of rupees by accused namely Ghulam Shabbir son of Ghulam Akber in connivance with other accused persons. On 15.2.2015 accused Ghulam Sabbir was arrested. On 08.04.2017 Investigating Officer submitted Interim Charge Sheet before the learned Trial Court. Learned Trial Court vide Order dated 17.5.2017 treated the Interim Charge Sheet as final against accused Ghulam Sabbir and Iftikhar Gadar/Applicant. Per prosecution accused Mst. Almas is still at large. Applicant filed Bail Application bearing No. 295/2017 before the learned Trial Court which was declined vide Order dated 13.3.2017. Thereafter, Applicant approached this Court for Interim Pre-arrest Bail, which was granted vide Order dated 13.03.2017.

3. Mr. Faraz Fahim Siddiqui, learned counsel for the Applicant has argued that the Applicant is not nominated in the F.I.R and was initially shown as witness but, is subsequently nominated with malafide intention by the Complainant in connivance with police. He next contended that the Applicant is innocent and during course of investigation his name is given by the co-accused namely Ghulam Sabbir whose statement before police is not admissible in evidence. He next contended that merely taking the name of the Applicant by the co-accused by alleging that Applicant counter signed the cheques and subsequently withdrew money from the company account in concerned Banks does not saddle Applicant with criminal liability. He next contended that there is delay of about two years in lodging of the FIR for which no explanation is given. He next added that the alleged offences do not fall within prohibitory clause of sub-section (1) of Section 497 Cr.P.C., therefore, Applicant is entitled to the concession of bail. Per learned counsel Applicant has no previous criminal record and he is being victimized by the management of the company, therefore, on this ground also he is entitled to concession of bail. He next asserted that the Applicant was a Chief Financial Officer/Company Secretary of the Company and his provided job description was co-signatory of company Bank accounts with co-accused Ghulam Sabbir in respect of all cheques. Therefore, the Applicant has not committed any fraud or forgery in the company accounts; that on daily basis Applicant used to counter sign as proforma signatory around 50 to 100 Cheques, this makes around 2800 to 3000 cheques per month. He next added that to keep track of all cheques is humanly impossible; that co-accused Ghulam Shabbir has committed forgery and not the Applicant. He next contended that the main accused Ghulam Shabbir nominated in FIR used to forge documents to get counter signature of the Applicant, therefore, the Applicant is not involved in the alleged crime. He lastly prayed for grant of pre-arrest bail to the Applicant. Learned counsel in support of his contentions has placed Reliance on the case of Saeed Ahmed Vs. the State (1996 SCMR 1132), Dr. Asim Hussain and others Vs. The State (2017 P.Cr.L.J. 631), Shahid Hussain Vs.

National Accountability Bureau and others (2015 P.Cr.L.J. 883), Nasir Abbas Soomro Vs. The State (2011 YLR 1236), Muhammad Inam Ali Vs. The State and another (2011 P.Cr..L.J. 323), Shakir Hussain Vs. The State (PLD 1956 SC 417), Muhammad Bux Vs. The State (PLD 1956 SC 420), The State Vs. Shakoor Hashim Patel and others (PLD 1960 W.P. Karachi 926) with further argument that the case against the Applicant is based on documentary evidence and there is no possibility of tampering with the same. Therefore, the case against the applicant requires further enquiry.

4. Mr. Kashif Hanif, learned counsel for the Complainant has argued that the Applicant is charged with offence of manipulation of company's accounts, fraud, forgery and misappropriation of funds of the Complainant Company in connivance with co-accused Ghulam Sabir and others. Thus, the complainant company has sustained losses of millions of rupees. He next contended that co-accused Ghulam Sabbir during the course of investigation had confessed that the Applicant is also co-signatory of company's Bank accounts and all cheques and vouchers whereby funds of the company were misappropriated; In other words, without Applicant's signature no cheque could have been encashed. Therefore, the Applicant is equally involved in the crime of embezzlement of the company's funds. He next argued that the prosecution has recovered Applicant's LAPTOP, obtained other details that is, Pay Orders of different amount and obtained Call Data Recording (CDR) of Applicant which prima facie show that the Applicant was in touch with co-accused Ghulam Sabbir. Therefore, their connivance is apparent which connects the Applicant with the present crime. He next added that Audit Report of Premier Insurance Company clearly depicts fraud, forgery and embezzlement of funds of the company through fraudulent means by the Applicant and his accomplices. He next added that the Prosecution has collected sufficient incriminating material against the Applicant. He next contended that there is no malafide on the part of insurance Company to

falsely implicate the Applicant in the present crime. Therefore the Applicant is not entitled to bail.

5. Mr. Muntazir Mehdi, learned Deputy Prosecutor General, Sindh adopted the arguments of learned counsel for the Complainant with further argument that the Applicant has committed offence of fraud, forgery and misappropriation of huge amount of the Complainant-Company in connivance with co-accused Ghulam Sabbir and others; PW's have supported the case of complainant. Therefore, he is not entitled to concession of bail. He next argued that there is no malafide on the part of police to falsely implicate the Applicant in the present crime.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. I am conscious of the fact that while deciding a bail application this court has to make tentative assessment of the allegations made in the FIR, statements recorded under Section 161 Cr.P.C., nature and gravity of charge, other incriminating material against accused and pleas raised by him.

8. Record reflects that the Applicant was a Chief Financial Officer/Company Secretary of the Premier Insurance Company who used to sign all cheques/vouchers pertaining to account of Company as co-signatory. Audit Report clearly depicts fraud, forgery and embezzlement of funds of the Company by fraudulent means. I have noted that the Applicant has admitted in paragraph No. 7 and 8 of the memo of Bail Application that he used to counter sign around 50 to 100 cheques pertaining to Company Bank account every day, which prima facie connects the Applicant with the alleged crime. The documentary evidence collected by the prosecution also supports the case of the Complainant. The recovery of laptop and other material that is, cheques and payment vouchers is also prima facie showing involvement of the Applicant in the alleged crime.

9. The case of Applicant though is not hit by prohibition contained in section 497(1) Cr.P.C. but under the given circumstances no extra ordinary concession of bail before arrest can be extended to the Applicant. Apparently, sufficient incriminating material has been collected by the police which prima facie connect Applicant with the alleged white color crime.

10. I am of the view that grant of pre-arrest bail is an extra ordinary relief which is extended in exceptional circumstances when glaring malafide is shown on the part of prosecution to cause unjustified harassment and humiliation of the Applicant in case of his arrest. I have noted that there is nothing on record which could suggest or indicate false implication of the Applicant in the present case. Besides, Applicant has also failed to point out any malafide or ulterior motive on the part of complainant or Police. Therefore, the Applicant is not entitled to concession of bail.

11. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

12. In view of the above facts and circumstances, I am of the opinion that the applicant/accused has not made out a case for grant of pre arrest bail. Hence, Interim Pre-arrest Bail granted to the Applicant vide order dated 13.3.2017 is hereby recalled and the instant bail application is dismissed accordingly.

13. The above findings are tentative in nature which shall not prejudice the case of either party at the trial.

**JUDGE**