

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 1171 of 2017

Applicant : Iftikhar Gadar, son of Abdul Razzaq Gadar
through Syed Mehmood Alam Rizvi, Advocate

State : Mr. Abrar Ali Kitchi, DPG along with SI
Zulfiqar Ahmed of Police Station Mithadar.

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

Date of hearing : 11.08.2017

O R D E R

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

2. The case of prosecution is that on 22.11.2016 Mrs. Neena 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 Sabir son of Ghulam Akber in connivance with other accused persons. On 15.2.2015 accused Ghulam Sabir was arrested. On 08.04.2017 Investigating Officer submitted Interim Charge Sheet before the learned Judicial Magistrate/Trial Court. Learned Trial Court vide Order dated 17.5.2017 treated the Interim Charge Sheet as final against accused Ghulam Sabir and Iftikhar Gadar (Applicant). Per prosecution accused Mst. Almas wife of Ghulam Sabir is absconder in the case. Applicant filed first pre-arrest Bail Application bearing No. 295/2017 before the learned Additional Sessions Judge IXth Karachi

South, which was turned down vide Order dated 13.3.2017. Thereafter, on the same day Applicant approached this Court for Interim Pre-arrest Bail, which was granted vide Order dated 13.03.2017 and subsequently the same interim pre-arrest bail was recalled vide order dated 04.07.2017. As per learned counsel on 08.07.2017 applicant again approached the learned Sessions court Karachi South for grant of pre-arrest bail with sole ground of Shamrez Khan case Vs. The State (2000 SCMR 157) and the same was transferred to IXth Additional Sessions Judge Karachi South with Bail Application No. 1034/2017 and the same was dismissed vide order dated 08.07.2017 and applicant was taken into custody and remanded to prison. The applicant filed post-arrest bail application No. Nil/2017 before the learned IIIrd Judicial Magistrate Karachi South/trial court dismissed the post-arrest bail application of the applicant vide order dated 13.07.2017, thereafter he approached the learned Sessions Judge Karachi South, for the same purpose, who transferred the bail application No. 1066/2017 of the applicant to the court of IXth Additional Sessions Judge Karachi South, who declined the bail application of the applicant, vide impugned order dated 25.07.2017. Thereafter on 29.07.2017 the applicant has approached this court for grant of bail after arrest.

3. Mr.S. Mehmood Alam Rizvi, learned counsel for the Applicant, at the very outset stated at the bar that he does not contest the matter on merits as this court already decided the bail application of the applicant on merit and argued that applicant is ready and willing to deposit half of the charged amount, mentioned in the alleged crime as security, besides the reasonable amount of surety. He further argued that this is a fresh ground which was never urged earlier in the bail

application; therefore instant bail application can be heard on fresh ground. He lastly prayed for grant of post-arrest bail to the Applicant on the principle laid down by the Honourable Supreme Court in the case of Shamrez Khan Vs. The State (2000 SCMR 157). Learned counsel in support of his contentions/proposition has placed Reliance on the case of Nisar Ahmed Dina Vs. The State (2005 SCMR 1875), unreported Order dated 06.07.2015 passed by this Court in Cr. Bail Application No. 774/2015, unreported Judgment dated 11.02.2008 passed in C.P. No. D-2471/2007, unreported Order dated 17.12.2011 passed in Cr. Bail Application No. 1307/2011, unreported Order dated 14.11.2003 passed in Spl. Cr. Bail Application No. 40/2003, and unreported Order dated 11.07.2014 passed in C.P.No. D-3439/2014, unreported Order dated 18.02.2015 passed in C.P. No. D-2797/2011 and unreported Order dated 13.10.2015 passed in Cr. Bail Application No. 1271/2015.

4. Mr. Kashif Hanif, learned counsel for the Complainant has candidly conceded the proposal given by the learned counsel for the Applicant and raised his no objection, if the bail is granted to the Applicant, however he submitted that the same be subjected to furnishing his security amount, involved in the instant matter, with Complainant.

5. Mr. Abrar Ali Kitchi, learned Deputy Prosecutor General, Sind has opposed the grant of bail to the Applicant and argued that his first bail Application No. 330/2017 has been dismissed by this Court on merit and no fresh ground has been raised in the instant bail Application. He further contended that offences against which Applicant is charged is non-compoundable offence therefore no compromise can be made at the bail stage. He further submitted that

merely depositing half of the charged amount as security is not a fresh ground to claim concession of bail as a matter of right. He further contended that Applicant approached Judicial Magistrate Karachi South/trial court and learned Additional Sessions Judge Karachi South for grant of post-arrest bail but the same was declined, on the ground that the applicant failed raise any fresh ground and his earlier bail application was decided on merit, therefore his bail was rightly declined by both the learned courts below. He further argued that the Applicant has committed offence of fraud, forgery and misappropriation of huge amount of the Complainant-Company in connivance with co-accused Ghulam Sabir and others, which is serious in nature; therefore, Applicant is not entitled to concession of bail at this stage. He lastly argued that directions may be given to the learned trial Court to examine the material witnesses within a period of two months. In support of his contention he has placed reliance on the case of Aamir Masih Vs. The State & others (2013 SCMR 1524), Mehrban Ali Vs. The State (2004 SCMR 229), Sheikh Muhammad Sadiq Vs. The State & others (2013 P. CR. L.J 252).

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. It is well settled law that considerations for pre-arrest bail are totally different from post arrest bail. Pre-arrest bail is an extraordinary relief, whereas the post-arrest bail is an ordinary relief.

8. The record reflects that the Applicant initially filed a pre arrest bail application, which was dismissed by this court on merits vide order dated 04.04.2017.

9. On a tentative assessment of the record, it transpires that the Applicant was a Chief Financial Officer/Company Secretary of Premier Insurance Company and was vested with the authority to sign all cheques/vouchers pertaining to the accounts of the Company as co-signatory. Prima facie the Audit Report clearly holds the Applicant responsible for fraud, forgery and embezzlement of funds of the Company through deceitful means. In addition, further credence is provided to the Report through the documentary evidence collected by the prosecution. The recovery of laptop and other material i.e. cheques and payment vouchers apparently connects the Applicant with the alleged crime. The contention of the learned counsel that the Applicant is willing and ready to deposit half of the alleged embezzled amount in Court does not become a bailable offence automatically and to absolve the Applicant from the allegations leveled against him and neither is the same a fresh ground for being provided with ordinary/discretionary relief at this stage.

10. I have noted that this is not a civil dispute that is amenable to the wishes of the contesting parties. The charge leveled against the Applicant in the instant matter is a serious, besides that section 408, 468, 471, 420 and 34 P.P.C., applied by the prosecution are non-compoundable, therefore this court has to examine as to whether applicant has made out a case of further inquiry or not, and in the absence of a case of further inquiry, the Applicant is not entitled to the concession of bail by applying the analogy in the case of Shamrez Khan (supra). I am fortified by the decision rendered by the Hon'ble Apex Court in the case of Muhammad Faiz alias Bhoora Vs. the State & others (2015 SCMR 655), The Hon'ble Supreme Court has held that

the precedents in bail matters were of no help to a party, as it varied from case to case depending upon the facts of each case.

11. It is further noted that there is nothing available on record, which could suggest or indicate false implication of the Applicant in the present case.

12. In view of above facts and circumstances Applicant has failed to make out a case for grant of bail at this stage. Therefore, Bail Application is hereby dismissed.

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

14. The above findings are tentative in nature which shall not prejudice the case of either party at the trial. However, learned Trial Court is directed to record evidence of material witnesses within a period of one month. Thereafter, Applicant will be at liberty to move fresh Bail Application before learned trial Court on fresh ground, if any.

Shafi P.A

JUDGE