



Airport on their arrival on the instructions of the absconding accused Al-Barakah Weiming @ Lan; during interrogation the accused persons disclosed that the mastermind of the committed crime is one of their Chinese national namely Weiming @ Lan, who brought them to Pakistan for such illegal act, in this way the accused persons above named alongwith absconding accused Weiming @ Lan were busy in withdrawal of transaction through recovered ATMs were intercepted and caught red handed ATM of Al-Barakah Bank DHA, Karachi, hence case was registered against accused persons punishable under Section 3, 4, 5, 13, 14 PECA R/w 420/467/468/471/109 PPC.

2. Learned counsel for the applicant, *inter alia* contends that co-accused XIAO JIAN JUN was granted bail by this court, hence, present applicant is also entitled for bail on rule of consistency; recovery of four ATMs Cards was effected only; during examination of complainant he has not identified the present applicant. In support of his submissions, learned counsel for applicant has relied upon the cases reported as 2008 SCMR 173, and 2015 YLR 1952.

3. In contra, learned Asst. Attorney General for Pakistan contends that this is a unique case whereby the present applicant alongwith co-accused paralyzed the banking system and recovery of Rs.22,80,000/- alongwith 355 ATM Cards was effected, hence, applicant is not entitled for bail.

4. Heard and perused the record.

5. Since, the plea of Rule of consistency has been pressed hard hence the same needs a response *first*. I am conscious of the legal position that '**rule of consistency**' can well be pressed at bail stage but I would make it clear that such rule would not be available merely on pointing out release of one of co-accused. Such *rule* could only be pressed when the case of accused, seeking release on such rule, is similar to that of released co-

accused. Reference may well be made to the case of Muhammad Azim v. State PLD 1988 SC 84 wherein such plea was responded as:-

“.... After hearing him in this behalf we have come to the conclusion that the mere fact that a person who has been allowed bail in the case (who in our view) should not have been allowed bail, does not justify grant of bail to a person who is otherwise not entitled to it. The argument based on the so-called principle of consistency is repelled”.

In short, for insisting rule of consistency the criterion shall always be to *prima facie* show that both cases (allegations) are *identical* else release of co-accused *alone* would never be sufficient for seeking bail because release of every single accused, *legally*, is subject to examination of available material to *prima facie* opine whether there exists reasonable grounds to believe his linkage with charged offence or otherwise?.

6. To see whether case against the present applicant / accused is similar to that of co-accused XIAO JIANJUN, it would be appropriate to refer relevant parts of challan / charge sheet which are:-

“.... Moreover, at above premises viz. Bungalow No. 143-B/1, Main Khayaban-e-Bahria, DHA, Phase-II, Karachi one suspected Chinese national namely Xiao Jianjun was also found and brought at PS FIA Cyber Crime Circle, Karachi and on questioning disclosed that he is running Chinese Guest House at above premises/bungalow and he brought the accused persons Liu Liming, Zeng Chun Yu and Zhu Yu Ping from the Airport on their arrival on the instruction of accused Weiming @ Lan, who was residing in a room of his guest house on rent. Accused Xiao Jianjun found suspected, therefore, he was also arrested in the case and during conducting his personal search recovered fake/forged 20-ATM Cards.

.... He is residing in Pakistan since 2007 having multiple entry visa for Pakistan and not involved in any manner in such crime as well as he has no concern or any relation with act of crime committed by accused persons Weiming @ Lan, Liu Liming, Zeng Chung Yu and Zhu Yu Ping. Furthermore, during interrogation, the accused Xiao Jianjun was confronted before accused persons namely, Liu Liming, Zeng Chunyou and Zhu Yu Ping, but no accused was recognize as one of their accomplice to accused Xiao Jianjun. Besides, accused Xiao Jianjun was not found in the

CCTV coverage i.e. Videos as well as footage of concerned ATM as provided by the complainant bank branch. Accused Xiao Jianjun only found involved in running his Chinese Guest House similar to others as being run in different area of DHA. Thus from the facts and circumstances as well as evidence(s) came on record during the investigation no any connection/relation of specific evidence was found on record against accused Xiao Jianjun, Zeng Chunyou and Zhu Yu Ping, hence, brought the above facts into the knowledge of competent authority and name of accused Xiao Jianjun was mentioned in Column-2 of Interim Charge Sheet with Blank Ink as "Not Sent Up For Trial."

7. *Prima facie*, the applicant / accused is not justified to insist rule of consistency when allegations & incriminating materials themselves are sufficient to draw a thick whereby differentiating the case of applicant / accused from that of co-accused XIAO JIANJUN. Thus, the plea of rule of consistency, being not applicable, loses its significance for instant bail plea.

8. *Prima facie*, perusal of the record shows that offence i.e. '*withdrawal of cash*' from ATM machine is not disputed. The *dare* to repeat withdrawal by *illegal means* from one and single ATM machine without an attempt to conceal their *identities* is itself sufficient to show the *dare* of the accused persons that they never had any respect to the law of the land. Such *impression*, I would insist, needs to be removed not only for the *nationals* but foreigners *too*. I would further add that the ATM machines are meant to facilitate people at large which even are placed at convenient public places as *normally* the system thereof carries an impression of '*safety & security*' of '*bank-accounts*' of general public hence commission of such *like* offences, shaking a system and trust of public, would always require to be looked *differently*. Reliance is placed on the case of *Muhammad Ashfaq v. State* 2015 SCMR 1716 wherein it is observed as:-

"9. In ordinary course and in crimes of ordinary nature, such discretion is to be exercised in favour of the accused however, when ingenious contrived and

designed methodology is pressed into service for defrauding a bulk of poor people through fraudulent means, would take out the case of such accused person from the ordinary principle, where the discretion in granting bail by the court shall ordinarily not to be exercised in a routine manner taking the matter leniently otherwise, the entire society would be corrupted through such acts of detestable nature”.

9. Further, material, so available, shows that there is recovery of articles, used for *illegal* withdrawal; CCTV evidence is there which *prima facie* link the applicant / accused with commission of a crime, having its uniqueness, therefore, applicant / accused appears to be not entitled for concession of bail, at this stage of the matter. Even otherwise, the charge against the applicant / accused also brings the bar of Section 497(i) Cr.PC wherein the bail could only be granted if one (accused) succeeds showing his case to be covered by subsection (ii) of Section 497 Cr.PC.

10. Keeping in view of the above discussed circumstances in the preceding paras I am not inclined to grant bail, hence, the bail plea of the applicant/accused is hereby dismissed. However, while parting the trial Court is directed to conclude the trial within a period of three months. In case of failure, applicant is at liberty to repeat bail application on hardship ground.

JUDGE