IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No. S-102 of 2019

Abdul Rehman
Applicant through: Mr. Khadim Hussain Leghari Advocate

The State
Respondent through: Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh

Date of hearing: 08.3.2019

Date of decision: 08.3.2019

ADNAN-UL-KARIM MEMON, J. Through instant bail application, Applicant Abdul Rehman seeks post arrest bail in F.I.R No.464/2018 registered under Section 381-A, 34 PPC at Badin Police Station.

2. Brief facts of the prosecution case are that Complainant Malik Shahid Hussain Deputy Manager, State Life Insurance Hyderabad Zone lodged the aforesaid F.I.R against the Applicant with the allegations that on 30.12.2018, he was informed by Karim Bakhsh Soomro, Area Manager and Mehboob Ali Cashier that the Applicant had informed them that when he came in the office and saw that lockers were broken. On such information, he found Rs.2,143,683/- missing rather stolen. Inquiry in the matter was conducted, thereafter FIR was lodged. Investigating Officer recorded statements of prosecution witnesses arrested and interrogated the Applicant on 31.12.2018; got recovered alleged amount on the same day. Finally, Investigating Officer submitted Charge Sheet on 16.2.2019 before the trial court. Applicant filed bail application No. 2 of 2019 before the learned trial Court i.e. 1st Civil Judge & Judicial Magistrate, Badin, which was dismissed vide order dated 09.1.2019. He being aggrieved by the aforesaid

decision assailed the same before learned 2nd Additional Sessions Judge Badin who too declined the Bail vide order dated 15.1.2019, now the Applicant has approached this court on 26.1.2019.

3. Mr. Khadim Hussain Leghari learned counsel for the Applicant has argued that the Applicant is quite innocent and has falsely been involved in the alleged crime. It is contended that due to personal grudge of the complainant, he has been booked in the present case. It is further contended that keys of locker are said to be misplaced on 04.4.2018 from one Karim Bakhsh Soomro, Area Manager and Incharge, but neither such entry of missing of keys is kept at police station nor keys of the safe locker were changed by the officials of the office, hence the alleged recovery of amount is foisted upon the Applicant to save themselves from the departmental action; that no *prima facie* case is made out against the applicant. Counsel further contended that there is an inordinate delay of one and half day in lodging the FIR, which creates doubt in the prosecution case, hence the case of the Applicant requires further inquiry; that the basic ingredients of alleged offence u/s 381-A PPC are missing which requires further inquiry; that the alleged offence does not fall within the prohibition contained under section 497 (1) Cr.P.C. He lastly prayed for grant of post-arrest bail to the applicant.

4. Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh has vehemently opposed the bail application and argued the recovery has been effected from the applicant, therefore no concession of bail can be extended to him at this stage. He lastly prayed for rejection of bail.

5. I have considered the submissions of the learned counsel for the Applicant, learned Deputy Prosecutor General for the State and examined the record minutely.

6. Theft is defined under Section 378 PPC, that whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. Tentative assessment of the record shows that none has witnessed the theft of Rs.2,143,683/- from the purported lockers and no evidence to that effect is available on record, therefore, the insertion of section 381-A PPC appears not only unjustified but also speaks about mala fide of the police, prima-facie, when none of the ingredients of offence is punishable with imprisonment falling within the prohibitory limb of section of 497 Cr.P.C then, refusing to grant bail to the applicant would be highly unjustified. However the observations made in this order are tentative in nature, which shall not prejudice the case of either party at the trial. Before parting with this order, it is necessary to observe that in cases of this nature, not falling within the prohibition contained in section 497 Cr.P.C, and invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because bail applications in hundreds are piling up in this Court and the diary of the Court is congested with such like bail applications. This occurrence is growing enormously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such matters. The honorable Supreme Court has

already set forth the parameters with regard the grant or refusal of bail since long however, the principle in two cases, out of many are directly attracted to the present case, are mentioned herein once again. In the case of *Mansha Khan v. The State (1977 SCMR 449)* it was held as follows:-

> *"— S.497 Crl.P.C. read with section 325/34 PPC— Grievous hurt – Bail – Offence u/s 325 PPC (repealed) being punishable with 7 years R.I. is not one of such offences where bail is to be refused by reason of prohibition contained in section 497 Cr.P.C.— held, bail in such cases, hence, not to be refused merely because of offence being non-bailable— Any strong reason being absent to refuse bail, Courts below, held, not properly exercised their discretion in refusing bail on basis of number of injuries suffered by victim of attack."*

7. In the case of Tariq Bashir V. The State (PLD 1995 SC 34) the honorable Supreme Court has taken notice of stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offences punishable with imprisonment of less than 10 years and held that "*grant of bail in such offences is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded.*" While elaborating exceptions, albeit it was mentioned that if there is a danger of the offence being repeated if the accused is released on bail, then grant of bail may be refused but it is further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not to be based on Surmises and artificial or weak premise. Even otherwise to ensure that the accused may not repeat the same offence, if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offence would disentitle the accused to stay at large as bail

granting order may be recalled in that event, therefore, such a ground should not be an absolute bar in the way of grant of bail. It may be noted that there is a sky high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration. It is settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in particular category of offences without placing any prohibition on such discretion.

8. Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497 Cr.P.C. shall be a rule and refusal shall be an exception then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by this Court under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973 is binding on all subordinate Courts. My view is supported by the decision rendered by the Honourable Supreme Court in the case of The State v. Syed Qaim Ali Shah (1992 SCMR 2192) and the famous case of Khan Asfandyar Wali and others v. Federation of Pakistan (PLD 2001 SC 607).

9. I expect the Courts below to adhere to these binding principles in future and not to act mechanically in the matter of granting or refusal of bail because liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach.

10. Accordingly, this bail application is allowed. The applicant is granted bail subject to his furnishing solvent surety in the

sum of five hundred thousand rupees (Rs.500,000/-) and P.R. bond in the like amount to the satisfaction of learned trial Court.

11. These are the reasons of short order dated 08.3.2019.

JUDGE

Irfan Ali