

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.479 of 2019

Date	Order with signature of Judge
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1. For orders on M.A. No.3316/2019 (U/A)
2. For orders on M.A. No.3317/2019 (Ex/A)
3. For hearing of bail application

10.04.2019

Mr. Muhammad Hanif Samaa, advocate a/w applicant.

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Nazar Akbar.J- The applicant/accused is facing trial in **Crime No.31/2019** under Section 420/467/468/471/34 of the PPC r/w Section 5(2) ACT-II of 1947 registered at P.S. ACE Karachi. The applicant after failing to obtain bail from the Court of Special Judge Anti-Corruption (Provincial), Karachi has preferred this bail application.

2. Brief facts of the prosecution case that as a result of enquiry into the complaints 97/2014 & No.181/2014 filed by one Qamar-uz-Zaman Siddiqui s/o Ghulam Ahmed Siddiqui conducted by Aijaz Ahmed Kaimkhani, EO/IP of ACE East Zone, Karachi who established that Plot No.5-A, Block No.2 admeasuring 303 sq. yards in the area of Pakistan Employees CHS Ltd., Karachi was allotted to Aziz Mehfoz Farooqui vide allotment order No.357 dated 19.03.1950. In the year 1984, a letter was received in PECHS office from Jamiluddin Farooqui regarding death of his father-allottee of the plot. In the said letter he had provided the list of 13-legal heirs. The PECHS received an application on 01.03.2006 from the legal heirs of the late allottee for transfer of the said property in their favour. Application was annexed with the application in the newspaper, Indemnity bond, copies of NIC, heir-ship certificate issued by the

First Class Magistrate and other papers required, as per procedure for transfer of the property. Application alongwith documents was forwarded by the PECHS to the Ministry of Housing & Works, Government of Pakistan Islamabad under a letter dated 18.5.2007. Section Officer, Ministry of Housing & Works, Government of Pakistan under its letter dated 04.06.2007 issued no objection for transfer of the said residential plot in the favour of 12 legal heirs, as the widow of the late allottee had also died on 25.11.1990. Following no objection from the Government of Pakistan, Ministry of Housing & Works the PECHS issued Memorandum (Transfer Order) dated 18.6.2007 in favour of legal heirs of the late allottee.

On 30.8.2007 the society received an application from Syed Muhammad Arshad as Attorney of legal heirs for execution of the Sub-License (Form-A) along with the application a General Power of Attorney purportedly executed by legal heirs of late Aziz Mehfooz under serial No.4211, registered No.854, Book-I, Micro Filming Roll No.47709/3500 dated 23.06.2006 and other papers were annexed. While scrutinizing the papers the General Power of Attorney was observed as suspicious and doubtful. Consequently, the society through a letter dated 18.9.2007 requested the Sub-Registrar, Jamshed Town-I Karachi to verify the subject General Power of Attorney. The Sub-Registrar under his endorsement sent a letter dated 11.10.2007 from Microfilming Unit disclosing therein that page No.1 & 2 of the said Power of Attorney were changed and fictitious. Thus whole Power of Attorney become forged & fabricated.

The society on such disclosure regarding the forgery, sent letter to the legal heirs of the allottee/transferees on record of the PECHS, however nobody turn up. Consequently, the society under an office order dated 30.01.2008 suspended the Transfer Order and kept the

title of the property in abeyance in the interest of legal heirs to save/protect their rights/ownership.

The society had also received letter from Qamar-uz-Zaman Siddiqui for action against unlawful construction on the said plot by the Syed Muhammad Arshad. He had also informed regarding the forgeries committed by the said Syed Muhammad Arshad. A complaint was also received regarding illegal construction which was forwarded to the Chief Controller, KBCA for action.

On 21.01.2013, Ms. Saba w/o. Syed Muhammad Arshad submitted an application in PECHS office showing herself to be the Sub-Attorney of Syed Muhammad Arshad vide registered No.306, Book No.II dated 10.09.2009 registered by Safraz Ahmed Narejo the then Sub-Registrar Landhi Town Karachi (now expired), hence this FIR.

3. Heard, learned counsel for the applicant who states that his application for condonation of his absence on the date of hearing was granted, however, on the basis of medical certificate that doctor has advised him rest from 04.04.2019 to 13.04.2019. When confronted with the question that he has not joined the Investigating Officer prior to that he says that he has gone to the I.O but he was not available. No comments has been offered by the learned counsel for the applicant on the main ground of refusal to confirm the bail. The main ground for seeking bail before arrest is malafide on the part of the prosecution. Admittedly the applicant has been booked in an offence which amongst other includes an offence under **Section 467** of the **PPC** which entails punishment for life imprisonment or minimum 10 years. No allegation of bias or malafide has been shown against the enquiry committee into complaint No.97/2014 & 181/2014, which resulted in lodging of FIR. Admittedly applicant was

directly involved in the process of registration of forge and fabricated Sub-Power of Attorney. Apparently there is sufficient evidence available against the applicant. The case law referred by the trial Court in the order declining confirmation of bail has neither distinguished nor disputed since it is on the point of failure of applicant to join the investigation. The said case law is also binding on this Court where it has been observed that “the person who is guilty of misusing concession of bail is not entitled for extra ordinary relief of bail”.

5. In view of the above facts and circumstances, the present applicant/accused has no case for grant of pre-arrest bail which is an extra-ordinary relief; therefore, instant bail application is dismissed alongwith listed applications.

6. Needless, to mention here that the observations made hereinabove are tentative in nature and should not influence trial Court while deciding the case of the applicant/accused.

JUDGE

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