

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Bail Application No.S-750 of 2018
[Ali Bux v. The State]

Date of hearing: 10.05.2019.
Date of decision: 10.05.2019.
Applicant: Ali Bux through Mr. Ishrat Ali Lohar, advocate.
Respondent: The State through Mr. Imran Ahmed Abbasi,
Assistant Prosecutor General, Sindh.

ORDER.

Fahim Ahmed Siddiqui, J: Through instant bail application, the applicant is seeking pre-arrest bail in the case registered against him at PS ACE, Dadu vide Crime No. 12 of 2016 under Sections 409, 420, 467, 477-A & 34 PPC read with Section 5(2) Act-II of 1947.

(2) I have heard the arguments advanced from either side and perused the available record and case laws cited before me. After getting enlightened by the valued submissions made before me and scanning the available record, I have observed as under:

- (a) The applicant is the official of the District Account Office, Dadu. The allegations against him are that he along with and in collusion of other nominated accused including some pensioners have misappropriated huge amount, which was deposited in the accounts of those pensioners. It is alleged that the false pension vouchers were issued by the accused were deposited in the accounts of the pensioners during 2011 to 2012, which are stated to be excessive to the actual amount; the said vouchers were signed by the applicant.

- (b) From the record, it appears that the amount was deposited in the accounts of pensioners and it is not claimed that those pensioners are fake persons but in spite of fact that they are government pensioners, none of them has been apprehended or forced to appear before trial Court.
- (c) In final report, the co-accused Aziz Mustafa, who is the head of the Pension Branch, was let off along with three others. However, being incharge, the co-accused Aziz Mustafa cannot be given a safe passage from their vicarious liability.
- (d) Interim pre-arrest bail already granted to co-accused Ghulam Hussain, Ghulam Serwar, Zahid Moazam Shah and Azizullah Masroor has been confirmed by this Court vide order dated 08.04.2019 in Criminal Bail Application No.S-269 & 270 of 2018, hence, the rule of consistency is also applied on the case of applicant as his case is on better footings to that of co-accused.
- (e) All the pensioners belong to the Education Department, as such, some of the officials of Education Department must have been at least privy with the affairs but none of the officials of Education Department has been nominated as accused or cited as witnesses.
- (f) It is not clear so far that it is a matter of simple negligence or criminal negligence with a mindful and intentional act of causing loss to public exchequer, as such, the case becomes of further probe.
- (g) The offence of 'criminal breach of trust' under Section 409 PPC, itself requires further probe.
- (h) The applicant is civil servant and he succeeded in getting interim pre-arrest bail on 03-09-2018 and since then he is regularly attending this Court as well as trial Court and

there is no apprehension of absconding of the applicant or becoming fugitive to law and trial.

(3) In the light of the above observations, I am of the considered view that no ground exists for refusing the extra-ordinary plea of pre-arrest bail of the applicant. Resultantly, through the short order dated 03.09.2018, the interim relief granted to the applicant is confirmed on the same terms and conditions.

(4) Before parting, I would like to make it clear that if the applicant after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicant becomes absconder and he has chosen to be fugitive to law, then the trial Court is fully competent to take every action against the applicant and his surety including cancellation of their bail without making a reference to this Court.

JUDGE

Dated 10.05.2019.

Abdullah Channa/PS