

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CrI.B.A. Nos.22, 23, 24 & 25 of 2020

Date _____ Order with signature of Judge _____

Before:-
Mr.Justice Muhammad Ali Mazhar

Najam-ul-Haq.....Applicant/Accused

Versus

The State.....Respondent

02.04.2020

Mr. Umar Farooq Khan, Advocate for the Applicant.
Mr. Kafil Ahmed Abbasi, D.A.G.
Sub-Inspector Irfan Ahmed, I.O. present.
Sub-Inspector Zahoor Ahmed, I.O. FIA present.

Muhammad Ali Mazhar, J: The applicant has applied for post arrest bail in FIR Nos.27, 28, 29 & 33/2013 lodged under sections 409, 420, 468, 471, 109, PPC read with Section 5(2) PCA-II, 1947, P.S. FIA Crime Circle, Karachi.

2. The brief facts are that earlier the bail of the same applicant was confirmed vide order dated 12.11.2014 in Cr. Bail Application Nos.1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192 and 1193 of 2013 in FIR Nos.26, 27, 28, 29, 30, 31, 32, 33 and 35 of 2013 lodged at P.S. FIA Crime Circle Karachi. By consent certain conditions were made in paragraph 6 of the bail order with further rider that if the applicant fails to deposit the amount in terms of the bail confirming order, the I.O. may approach to the trial court for cancellation of bail. Apparently the order was not fully complied with, therefore, the I.O. moved application for

cancelation of bail and the bail was cancelled, thereafter, the applicant was taken into custody. Again the same applicant moved bail application under Section 497 Cr.P.C. in FIR Nos.27, 28, 29, & 33 of 2013 in the trial court and vide order dated 23.4.2016 the learned Special Court (Central-I), Karachi granted bail in the following terms:-

“In view of the above circumstances, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- each and P.R. bond in the like amount to the satisfaction of this Court with direction to deposit the remaining amount of Rs.21,00,000/- in favour of TDAP in this Court within three months but, however, prosecution is at liberty to move application for cancellation of bail of the applicant/accused, if he fails to deposit the remaining amount of Rs.21,00,000/- within three months, if so desire.”

3. It appears that again the order was not fully complied with due to financial crunch, therefore, vide order dated 12.12.2019 the bail was cancelled on the application of I.O. The concluding paragraph of the order dated 12.12.2019 is reproduced as under:-

“It seems that order of the Hon’ble High Court of Sindh in criminal bail applications as reproduced above is very much clear that an amount of Rs.75,00,000/- is outstanding against accused, as such, he agreed to pay the amount within time framed, however, accused failed to comply with the worthy order and he only paid Rs.15,00,000/-, till to date. Therefore, the actual balance amount payable against him is Rs.60,00,000/-, which he failed to deposit in favour of TDAP. Thus, order of the Hon’ble High Court of Sindh dated 12.11.2014 as well as post arrest bail order dated 23.04.2016 was not complied by accused, hence, in view of above situation, the post arrest bail granted to accused Najam-ul-Haq s/o Ahsan-ul-Haq is cancelled as provided u/s 497(5) Cr.P.C. He is present before the Court on bail, his bail stands cancelled and surety discharged. He is taken into custody and remanded to jail.”

4. After cancellation of bail the applicant approached this court for post arrest bail through instant bail applications. Notice was issued to the learned D.A.G. and I.O. Yesterday, the matter was fixed when Mr. Umar Farooq Khan, Advocate for the Applicant argued that the applicant is retired employee of National Bank of Pakistan (NBP) and he has served there for at least 35 years. He further argued that bank account of the applicant has been frozen under the orders of FIA and his full and final retirement dues would be approximately Rupees Ten Million and the TDAP liability could have been satisfied if the bank account of the applicant would not have been seized. On this arguments both the I.Os. sought time and approached to the NBP and today they have produced a copy of email, which was communicated by Sarwar Shahid who is an employee of NBP, in which it is stated that the amount of provident fund of Rs.1,159,221.07 (as on 16.07.2014) is lying in the bank account of the applicant and no payment of leave encashment/final settlement etc. is released to him so far due to dismissal from service.

5. Learned counsel for the applicant argued that at present the applicant is 70 years old and he is behind the bars for last 06 months after cancellation of bail, therefore, he further requests that the applicant may be granted bail subject to payment of Rs.1,159,221.07 which is lying in his Bank Account in the shape of pay order to be paid to TDAP and 03 months further time may granted to the applicant for payment of remaining amount and on the release of applicant he will contact to the H.R. Department of the NBP for full and final settlement of his dues.

6. Both the I.Os stated that the applicant was arrested in the year 2013, thereafter, he was dismissed from service of NBP. To a question raised by this court, the I.Os. submit

that the charge was framed in the year 2015 but they do not know the exact date and they further submit that 20 witnesses have been cited in the list, out of which only 03 witnesses have been examined and the matter is pending in the trial court.

7. The proposal of the applicant's counsel has been accepted by both the I.Os and the learned D.A.G. Learned counsel for the applicant further pointed out the order dated 12.12.2019 that the bail was cancelled only in case Nos.16, 17, 18 & 24 of 2013 i.e. FIR Nos.27, 28, 29 & 33 of 2013, which fact has been confirmed by both the I.Os. He further pointed out that the learned trial court in the order dated 23.4.2016 observed that the remaining amount of Rs.21,00,000/- to be deposited in court within 03 months and due to failure to fulfil this condition the bail was cancelled. At this juncture both I.Os informed to me that the amount of Rs.21,00,000/- was only payable in 04 FIRs and not in the remaining FIRs for which also the order is liable to be complied with by the same applicant. However, they conceded to grant bail in the present bail applications agreeing on the proposal of applicant's counsel.

8. After hearing the arguments, the criminal bail application Nos.22, 23, 24 & 25 of 2020 are disposed by consent in the following terms:-

- (a) The I.Os. will communicate a letter to the Head Office, NBP to defreeze the account of the applicant today.
- (b) The applicant is granted bail subject to furnishing surety of Rs.100,000/- with P.R. Bond in the like amount to the satisfaction of the trial court. The applicant shall submit a pay order in the sum of Rs.11,00,000/- from his Bank Account which is being operated in the NBP and the same shall be

deposited in the trial court within 15 days, which will be handed over to the TDAP on proper verification and identification.

- (c) The remaining amount if any as requested by the counsel for the applicant shall be deposited in the trial court within 04 months. The trial court shall ensure that if the passport of the applicant is not in the possession of the trial court the applicant shall deposit his original passport in the trial court and shall not leave the country without express permission of the trial court.
- (d) It is further clarified that in case the applicant is acquitted from the charge at any stage of proceedings, the trial court shall pass specific directions in the judgment/order for the refund of aforesaid deposited amount to the applicant and the F.I.A will recover this amount from T.D.A.P and pay to the applicant. It is further clarified that the depositing of this amount shall not prejudice the case of applicant before the trial court and the case of applicant will be decided on its own merits.
- (e) The applicant may not be released if he is required in any other case.
- (f) The above findings are tentative in nature and shall not prejudice the case of either party.

Office is directed to place copy of this order in above listed criminal bail applications. The I.Os shall also communicate copy of this order to concerned branch of National Bank of Pakistan, where the applicant is operating his bank account.

Judge

(g)
(h) and communicate letter to the NBP

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may be discharged. atever the liability of TDAP

The learned counsel for the applicant has produced the copy of order dated 23.04.2016. He further submits that the conditional bail order was granted by the High Court as well as the trial court subsequently but due to non-compliance of the order the bail was cancelled, however, he categorically argued that the applicant is a retired employee of National Bank of Pakistan and he served for at least 35 years. On instructions of the FIA, the account of the

applicant was blocked by the National Bank of Pakistan and if the entire retirement dues and commutation are worked out the same would be approximately Rupees Ten Million. He further submits that if the account is restored, the TDAP liability may be discharged but due to blockage of the account the applicant is not in a position to pay off single penny. Sub-Inspector Irfan Ahmed, I.O. and Sub-Inspector Zahoor Ahmed, I.O. FIA are present. Both Investigation Officers admit that the account has been blocked, however, they request for one day's time to approach the National Bank of Pakistan and apprise this court with regard to the balance amount and whether full and final settlement dues would be credited and in how many days. For this purpose the matter is adjourned to tomorrow i.e. 02.04.2020 at 11:00 A.M.

Office is directed to place copy of this order in CrI.B.A. Nos.23, 24 and 25 of 2020.

Judge

Asif

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl.B.A. No.317 of 2020

Date	Order with signature of Judge
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For hearing of bail.

1.For order on office objection at 'A'.

2.For hearing of bail application.

16.03.2020

Mr. M. Hanif Qureshi & Ms. Zakia Ashraf,
Advocates a/w the Applicant.

Mr. M. Irfan Memon, Assistant Attorney General.

Mr. Muhammad Amin Khan, Sub-Inspector FIA
Anti-Corruption Circle, Karachi (Cell: 0331-0062233)
present.

The case of the applicant is that he was already on bail in Crime No.54/2013 (case No.40/2013), however, on 14.01.2020 due to absence of the counsel and the applicant both, the learned trial court recalled the bail order at twelve o'clock and forfeited the surety. The show cause notice was also issued under Section 514 Cr.P.C. to the surety. The I.O. present in court admits that the applicant remained on bail but it was recalled due to his absence as well as absence of his counsel. The learned counsel submits that the condonation application could not be filed as he reached in the trial court with some delay. In this bail order I have also mentioned the medical certificate produced by the applicant that he is patient of schizophrenia. Since the bail order was not recalled on merits but due to absence of the applicant and his counsel,

therefore, this bail application is converted into protective bail as also suggested by the I.O. and the learned Assistant Attorney General. The applicant is granted protective bail for ten days from today. In the meanwhile the applicant may approach to the trial court alongwith all relevant record including condonation application of his previous absence that will be considered by the trial court. The medical certificate should also be produced for consideration. This protective bail order will remain in force for ten working days only from today or till the date on which the applicant will appear in the trial court whichever is earlier. Bail application is disposed of accordingly.

Judge

Asif

