

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 482 of 2020
Muhammad Ammar S/o Salman

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of bail application.

17.04.2020.

Mr. Rehmat Hussain, Advocate for Applicant.
Ms. Rubina Qadir, D.P.G.
Mr. Muhammad Jamil, Advocate for Complainant.

Through this bail application, the Applicant seeks Post Arrest Bail in FIR No.114/2020 registered under Sections 381, 408 & 34 P.P.C at P.S. Clifton, Karachi. The Applicant's bail application before the trial Court stands dismissed vide Order dated 16.03.2020. I have heard the learned Counsel for the Applicant as well as the Counsel for the Complainant and Deputy Prosecutor General. My observations are as under:-

(a) It appears that the Applicant, who was working as Store Manager of "MINISO" located at The Forum Mall Clifton, Karachi, has been implicated in the present case on the ground that he alongwith certain other employees was stealing goods from his store and selling them to another store of the same Company at Ocean Mall, Karachi, which was being run as a Franchise Store by one Ali Niaz. Apparently he has been nominated in the FIR with a specific role and huge quantity of goods is missing from the store.

(b) It further appears that some audit was also conducted, which has resulted in shortage of goods in the Store at The Forum Mall, whereas, they have been found in excess at the Store in Ocean Mall from the quantity sold and supplied by the Company to the Franchisee. The *modus operandi*, as noted above, was to steal the goods from the Store at "The Forum" and then sell it on lesser price to the franchisee of the Company having the Store at "Ocean Mall".

(c) If further appears that in somewhat similar circumstances in respect of other stores, FIR No. 654/2019 was registered at P.S. Shahrah-e-Faisal, in which the present Applicant and others have also been implicated using the same

modus operandi. Though, this cannot operate as an absolute bar in granting bail in another crime; but here, the *modus operandi*, the Company and the nature of crime is identical.

(d) Interim Challan has been filed and statements of witnesses under Section 161 Cr.P.C have also been implicated the present Applicant in the commission of the crime as alleged. The Store owner, who has though also been nominated, but has given his 161 Statement and has stated that his Franchise Store was being managed by one Waqas, and on the pointation of missing goods from one store and excess at his store, he was found involved along with present and other accused. His statement implicates Waqas and present applicant in this crime.

(e) Not only this, the Applicant has already recorded his confessional statement under Section 164 Cr.P.C before the concerned Magistrate and has admitted that this shifting of goods from the Store being run by the Company itself was neither permissible to be sent to any other store of the Company; nor to a franchise store; and therefore, he has not been able to shift the burden on him, as after all he was the Store Manager. Though the Counsel for the Applicant has made an effort to argue that the confession was recorded on some promise by the prosecution, whereas, the applicant has implicated the real culprits; however, this aspect cannot be considered at this stage of the proceedings as presently, there is an admission and a confessional statement before the Court recorded in accordance with law. He has not challenged the veracity of the statement nor the procedure so adopted; hence this aspect, at this stage of the proceedings, cannot be considered in favor of the applicant for grant of bail.

(f) As to the delay in registration of the FIR and so also some of the offences beingailable and falling under the non-prohibitory clause; it would suffice to observe that this is not always a consideration for grant of bail *ipso facto*. Cases like the one in hand under Section 381 PPC always come on surface subsequently and delay in registration of FIR in such matters may be inevitable.

(g) In the 161 Cr.P.C. Statements, the witnesses have fully implicated the present Applicant and these statements have been read out by the learned Special Prosecutor. The Hon'ble Supreme Court in the case reported as ***The State / ANF v Aleem Haider (2015 SCMR 133)*** while cancelling a bail granted by the High Court has deprecated the observations that statements of witnesses recorded under section 161 Cr.P.C. are not to be looked into, and has been pleased to hold that grant of bail or its refusal depends on the material inclusive

of 161 Cr.P.C. Statements of prosecution witnesses, which could not be brushed aside merely on the ground that it would require a deeper appreciation of evidence. In this matter, not only there are statement of witnesses implicating the applicant; but so also a confessional statement of the Applicant under section 164 Cr.P.C.

(h) Insofar as the case law relied upon by the Applicant's Counsel reported as *Karamat Ullah v. The State and another* (2020 MLD 153), *Saeed Ammar Bin Ali Alvi v. the State and another* (2011 MLD 1286) and *Ali Asghar v. State* (1980 PCrLJ 1032) is concerned, the same is not relevant due to peculiarity of facts involved herein coupled with the fact that 164 statement of the Applicant is on record.

In view of hereinabove facts and circumstances of this case, and the material so far collected by the prosecution, coupled with the statement of applicant under section 164 Cr.P.C., it appears that the Applicant is involved in the crime as alleged; hence, does not appear to be entitled for the concession of bail, and therefore, this bail application is dismissed. However, the observations made hereinabove, are tentative in nature and shall not affect the proceedings of the trail which shall proceed on its own merits.

J U D G E

Ayaz P.S.