

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 1968 of 2019

Zubair Ahmed

vs.

The State

For the Applicant / Accused : Mr. Qadir Hussain Khan
Advocate

For the Prosecution / State : Chaudhry Waseem Akhtar
Assistant Attorney General

Date of hearing : 13.05.2020

Date of announcement : 13.05.2020

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. 442 of 2019, registered on 13.10.2019 before P.S. FIA AHT Circle, Karachi, pertaining to offence/s under Section/s 3(2)(a)(b), 13/14 Foreigners Act, 1946, read with Sections 419, 420, 468, 471, 34, 109, P.P.C.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the Sessions Judge, Malir, Karachi, in Cr. Bail Application 2676 of 2019, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

- a. The applicant was arrested over seven months ago at Karachi Airport *inter alia* on the allegation of having a fake "OK to board" endorsement on his passport. During the course of investigating the applicant it was apprehended that he was an Iranian citizen illegally in possession of Pakistani credentials.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that the applicant was a Pakistani citizen, possessing a valid NIC and passport, veracity whereof could not be impeached as of date; further that the entire case was predicated upon conjectures and surmises as there was no material on the record against the applicant; even otherwise the alleged offence/s fell within the non-prohibitory

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

clause for consideration of bail, hence, it would be just and proper for the applicant to be enlarged on bail pending conclusion of the trial.

The learned AAG argued on behalf of the Prosecution and asserted that the applicant was not eligible for the relief sought as he was a Bangladeshi national. It was argued that the credentials of the applicant were sent to NADRA for verification, however, no report had been received as of date and in the absence thereof the question of bail ought not to be considered.

- c. The record demonstrates that the applicant was arrested on 13.10.2019 and remains incarcerated notwithstanding the assertion of the learned AAG that not even a NADRA verification report has been obtained despite the passage of over seven months since. Even otherwise the assertion of the learned AAG, that the applicant is a Bangladeshi national, is contradicted by the F.I.R., which alleges that the applicant is an Iranian national.
- d. The material placed on record, being copies of the passport and CNIC data of the applicant, show that the credentials are issued in the name (and parentage) of the applicant and upon a specific query as to whether such credentials were fake or forged, the learned AAG answered in the negative.

The position taken by the learned AAG was that while the credentials were neither forged nor fabricated, however, an investigation was being conducted by NADRA to ascertain whether such credentials were issued in compliance with the law or otherwise.

- e. In the absence of anything on the record to demonstrate the alleged suspect status of the applicant's nationality, or otherwise, compounded by the dearth of knowledge as to how much further time would be required to receive the relevant NADRA report, the continued detention of the applicant has not been justified by the learned AAG³.
- f. The alleged offence admittedly does not fall within the prohibitory clause and it is settled law in such matters the grant of bail is the rule⁴ and its refusal an exception⁵. The Supreme Court has illumined⁶ that in such cases Courts may consider favorably the granting of bail and decline to do so only in exceptional cases. Per the Prosecution, no exception is attracted in the present matter.
- g. Upon tentative⁷ assessment of the material⁸ collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence/s, merits further enquiry⁹,

³ Per *Muhammad Junaid Ghaffar J. in Akram vs. The State* (Order dated 16.04.2020 Criminal Bail Application 507 of 2020).

⁴ *Muhammad Tanveer vs. The State & Another* reported as PLD 2017 SC 733.

⁵ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

⁶ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

⁷ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁸ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁹ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception¹⁰.

h. In addition to the foregoing, the material placed before the Court does not indicate any criminal record of the applicant, in cases of an identical nature or otherwise; no argument has been articulated requiring the applicant's presence for further investigation at this stage¹¹ or denoting him as a flight risk; no apprehension has been expressed with regard to tampering of evidence by the applicant or repeating the offence/s, if enlarged on bail¹²; hence, no cause is apparent presently warranting the continued incarceration of the applicant *pendente lite*.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

¹⁰ *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

¹¹ *Riaz Jafar Natiq vs. Muhammad Nadeem Dar & Others* reported as 2011 SCMR 1708.

¹² *Subhan Khan vs. The State* reported as 2002 SCMR 1797.