

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 377 of 2020

Muhammad Hammad.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 579 of 2020

Muhammad Qasim.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 775 of 2020

Aamir Rasheed.....Applicant

Versus

The State.....Respondent

Date of hearing & Short Order : **22.07.2020.**

M/s. Khawaja Saif-ul-Islam and Syed Ahmed, advocates for applicant Muhammad Hammad (present in court on interim pre-arrest bail) in Cr. Bail Application No. 377/2020

M/s. Javed Ahmed Qazi and Sadaf Gul Memon, advocates for applicant Muhammad Qasim in Cr. Bail Application No. 579/2020

Mr. Shahab-ud-Din, advocate for the applicant in Cr. Bail Applications Nos. 775/2020

M/s. Nisar Ahmed Dogar and Zulfiqar Ali Shaikh, advocates for the complainant

Mr. Talib Ali Memon, APG for State along with SIP Khurram Shahzad (I.O.)

ORDER

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**Fahim Ahmed Siddiqui, J:** As all the above-referred bail applications pertain to the same offence and based on the same facts, as such this single order will suffice for their disposal. Amongst the

applicants, applicant Muhammad Hammad is present in court on interim pre-arrest bail while the rest of the applicants are confined in jail and intend to get themselves release on bail pending trial. In the instant matter, the criminal law was put in motion by lodgement of F.I.R. No. 165/2020 at PS Shah Latif Town u/s 406, 407, 420, 464, 468, 470, 471 & 473 PPC.

2. I have heard the arguments advanced and have gone through the available records with the assistance provided by the officers of the Court appearing for the respective parties. From whatever articulated or placed before me, I have gathered the following annotations.

(a) The F.I.R. was lodged on behalf of a well-known corporate body i.e. M/s. Daewoo Pak Motors Private Limited through their Manager Administration namely Muhammad Shahabuddin.

(b) The allegations against the applicants are that they have jointly caused a huge loss, which was mentioned at the time of lodging of F.I.R. as Rs. 11,20,00,000/-.

(c) Amir Rasheed is nominated as accused within the body of complaint made by the aforementioned company through their Manager Administration and none of the other accused are nominated in the F.I.R. The said Amir Rasheed was working with M/s. Daewoo Pak as Senior Manager Marketing and Sales and he was allegedly appointed on 01-08-2016.

(d) From the initial report made to police, it reflects that all the act of misappropriation was done by the only nominated accused i.e. Amir Rasheed single-handedly and even it is not mentioned that some other persons might have been involved in the case of misappropriation and fraud.

(e) Nevertheless, during investigation, the names of applicants Muhammad Hammad and Muhammad Qasim were brought into the light on the disclosure of applicant Amir Rasheed before the police.

(f) Such disclosure of Amir Rasheed before police needs corroboration otherwise the same is inadmissible as per provision under Articles 38 & 39 of the Qanoon-e-Shahadat.

(g) It reflects from the investigation papers that the act of defrauding a multinational company was done during the period of the year 2017 to the year 2019. It is pertinent to mention that during these financial years, proper audits were carried out and such audit reports were furnished to requisite authorities including F.B.R. It manifest that at the end of those financial years, no leakage or misappropriation was detected.

(h) It is alleged on behalf of applicants Muhammad Hammad and Muhammad Qasim that there was a practice in the company that they used to receive open cheques of a certain amount in respect of vehicles booked by the company. It is also alleged on their behalf that the company was involved in tax evasion, as such open cheques were received, which as a practice were handed over to Senior Manager Marketing and Sales i.e. Amir Rasheed.

(i) Although, the allegations of tax evasion were strongly controverted and even any business transaction with Muhammad Qasim was denied but the defence has placed some photographs showing the availability of Muhammad Qasim with some director of the company and other staff at the time of handing over a symbolic key at the time of delivery of the vehicle.

(j) It is alleged that the documents about the acknowledgement of open cheques, the acknowledgement of request letter for purchase of buses and trucks as well as confirmation of advanced payment et cetera issued by Amir Rasheed are forged; but the investigating officer did not bother to compare such original documents with the allegedly forged documents to establish forgery.

(k) It is claimed by the applicants Muhammad Hammad and Muhammad Qasim that they are dealers and used to book vehicles with Daewoo Pakistan (Pvt) Ltd but the prosecution could not establish that they were not dealer while they possessed several documents to establish that they used to deal with the company and several cheques were given by them, while tax deduction certificate was also issued in favour of applicant Qasim by the company. It is pertinent to mention that the investigation officer did not verify the said tax deduction certificate from FBR whether the same were used for tax adjustment or not?

(l) It is claimed by the prosecution that all the documents issued by applicant Amir Rasheed were bogus. But a document annexed with bail application of applicant/accused Muhammad Qasim (annexure G-6 at page 113) under the heading 'Transfer Advance Amount' was signed by Zubair Ahmed, Manager Finance. It indicates that there were business relations between Muhammad Qasim and Daewoo Pakistan. It is important to note that said Zubair Ahmed is neither made accused nor witness.

(m) It is claimed on behalf of the applicants/accused Muhammad Hammad and Muhammad Qasim that they were dealing with the principle accused Amir Rasheed (applicant

in Cr. B.A. No. 775/2020) honestly considering that he is a responsible representative of the company. It is also claimed on their behalf that their huge amount is still payable by the company while applicant Muhammad Hammad has filed a civil suit also.

(n) It appears that there were some loopholes purposely left in financial and administrative matters of the company, for the reasons best known to the administration but otherwise obvious; which has attracted some like-minded people within the company to play fraud.

(o) The contention of the learned counsel for the complainant that the bail of applicant Muhammad Hammad may be declined to enable them to recover some amount from him. **I consider that the purpose of criminal law is to punish the wrongdoer and the same may not be used as a tool for recovery.**

(p) In the existing scenario, it can be said that the case of the applicants Muhammad Hammad and Muhammad Qasim falls within the purview of further probe. Because of the aforementioned submissions of the learned counsel for the complainant regarding recovery, malice and ulterior motive is also available in favour of applicant Muhammad Hammad. Since all the evidence against the applicants/accused Muhammad Hammad and Muhammad Qasim is based on documents, which are in possession of the prosecution and investigation is completed as such there will be no impediment in extending relief to both the applicants.

(q) It is alleged by the prosecution that the applicant Amir Rasheed has siphoned out the plundered money out of Pakistan and the investigation officer has collected some

evidence in this respect. Besides, he is the nominated and principle accused and he is the mastermind of the entire game, as such at this stage no benefit can be extended to him.

3. In view of the above discussion, the anticipatory bail of the applicant Muhammad Hammad is confirmed on the terms and conditions mentioned in the interim order as well as my short order while the applicant Muhammad Haroon is admitted to bail subject to furnishing surety of Rs.10,00,000/- while the bail application of the applicant Amir Rasheed is declined. For the sake of succinctness and proper conception, I would like to reproduce my short order dated 22-07-2020, as under:

“Heard arguments. For the reasons to be recorded later on, interim pre-arrest bail already granted to the applicant/accused Muhammad Hammad son of Jameel-ur-Rehman through order dated 16.03.2020 is hereby confirmed subject to furnishing additional surety of Rs.700,000/- (rupees seven lac only) and PR bond in the like amount to the satisfaction the Nazir of this Court.

While criminal bail application of applicant Muhammad Qasim son of Muhammad Nawaz is admitted on bail subject to furnishing surety in the sum of Rs.10,00,000/- (rupees ten lac only) and PR bond in the like amount to the entire satisfaction of the trial Court.

The criminal bail application of applicant Aamir Rasheed son of Rasheed Alam is dismissed”.

4. The above are the reasons of my aforementioned short order.

5. Before parting, I would like to make it clear that all of the above observations are purely tentative and will have no bearing upon the trial of the applicants in any manner. It is further observed that if the applicants Muhammad Hammad and Muhammad Qasim will misuse the concession of bail in any manner; or the trial Court is satisfied that the applicants become absconders then the trial Court is fully authorised to take every action against the applicants and their sureties including cancellation of their bail without referring to this Court.

**J U D G E**