

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.100 of 2020

Applicants : i) Kamran Attaullah S/o Attaullah Chaudhry
ii) Muhammad Anwer S/o Abdul Razzak
Through Mr. Amir Mansoob Qureshi,
Advocate

Respondent : The State
Munir Ahmed Shaikh, Director FIA
Mumtaz-ul-Hassan, Addl. Director (Law)
Ali Marda, Deputy Director FIA
Khalid Naseem, Inspector FIA
Mr. Mehmood A. Qureshi, appearing on
behalf of son of the complainant

Date of hearing : 26.08.2020

Date of order : 26.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek pre-arrest bail in Crime No.01/2019 registered under sections 5(2) PCA 1947 r/w 161/165/109 PPC at FIA ACC, Karachi, after his bail plea has been declined by the learned Special Judge, (Central-I), Karachi vide order dated 24.12.2019.

2. Brief facts of the prosecution case as alleged in the FIR are that a written complaint dated 18.12.2017 filed by complainant Shaikh Muhammad Munawar (accused of Case/FIR No.04/2016 of FIA CCC, Karachi, who is one of Director of M/s. Azhar Corporation (Pvt.) Ltd. regarding demand and receipt of illegal gratification to the tune of Rs.24 million by FIA officers namely Dr. Muhammad Anwar, the then Assistant Director FIA, CCC, Karachi (I.O. OF Case/FIR No.04/2016) and Kamran Attaullah, the then Deputy Director, FIA, CCC, Karachi through frontman/facilitator namely Abdul Qadir Memon.

3. Learned counsel for the applicant contended that both applicants/accused are innocent and have falsely been involved in

this case in as much as the applicant/accused Muhammad Anwer was investigating officer of FIR No.04/2016 whereas the applicant/accused Kamran Attaullah was Deputy Director FIA, who granted permission for submission of charge sheet against a complainant who is accused in the above FIR, therefore, based on such enmity both applicants/accused have been dragged in a false case; that the complainant of this case is a personal friend of Addl. Director FIA Najaf Ali Mirza, therefore, the instant FIR is the outcome of enmity with Addl. Director FIA against the applicants/accused with collusion of complainant; that it is out of imagination that after receiving the alleged illegal gratification of Rs.24 million from complainant, they filed charge sheet against him which is unbelievable and a cooked up story with the active connivance of high officials of FIA; that a board of enquiry was constituted in order to ascertain the facts, as such, after its conclusion, the board was of the view that allegations are false and do not warrant any criminal action against officials, therefore, the FIR was lodged in disregard of the findings of the board; that as per record the computer from the premises of absconding accused Abdul Qadir Memon was seized, therefore, same was sent for forensic report, which reveals that the date of entries was manipulated as mentioned in report that said date was modified, thus, the same forensic report cannot be accepted as an evidence of this case and even the entries mentioned in the computer show some repair work of the office of applicants/accused, therefore, it is inadmissible at this stage. He next contended that absconding accused Abdul Qadir Memon filed C.P. No.D-2934/2018 before this Court against FIA officials for harassment and causing business obstruction and humiliating him. He contended that the basic rule is bail, not jail and further that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. The applicants/accused are being victimized at the instance of Addl. Director FIA Najaf Ali Mirza, therefore, he prayed that in these circumstances, the interim pre-arrest bail granted to applicants/accused be confirmed. In support of his contentions, learned counsel has relied upon the cases of (1) Muhammad Shahzad Siddique v. The State and another (PLD 2009 Supreme

Court 58), (2) Saeed Ahmed v. The State (1996 SCMR 1132), (3) Aamir Bashir and another v. The State and others (2017 SCMR 2060), (4) Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488), (5) Abdul Haleem and another v. The State and 2 others (2016 PCrLJ482), (6) Khalil Ahmed Soomro and others v. The State (PLD 2017 Supreme Court 730), (7) Umer Hayat v. The State (2007 YLR 345), (8) Muhammad Ilyas v. The State (2007 YLR 1024) and (9) Ishtiaq Ahmed Mirza and 2 others v. Federation of Pakistan (PLD 2019 Supreme Court 675).

4. On the other hand, Mumtaz-ul-Hassan, Addl. Director (Law) and Mr. Mehmood A. Qureshi, advocate appearing on behalf of the son of the complainant vehemently opposed for confirmation of pre-arrest bail on the ground that applicants/accused are FIA officials, therefore, no question arises for malice and ulterior motives on the part of other FIA officials, accordingly the purpose of pre-arrest bail is to save the innocent persons from ulterior motives of Police/FIA officials, such ingredient is lacking in this case. He contended that both applicants/accused demanded and received a huge amount worth Rs.24 million from the complainant as illegal gratification, therefore, such enquiry was conducted and it was proved during the enquiry that applicant/accused Kamran Attaullah received an amount of Rs.50,00,000/- in his office from one Muhammad Tariq paid by the complainant. He contended that the absconding accused Abdul Qadir Memon was the frontman of applicants/accused, as such, his computer was seized and entries show that applicant/accused Muhammad Anwar was paid an amount of Rs.250,000/- and applicant/accused Kamran Attaullah was paid an amount of Rs.85,000/-, Rs.100,000/- and Rs.50,000/- respectively while an amount of Rs.10 million was paid to the applicant/accused Muhammad Anwar at Lasania Restaurant, Karachi. He contended that there is direct oral evidence against applicants/accused for receiving of illegal gratification; that CDR of applicants/accused is available on record which shows the conversation with Abdul Qadir Memon, Shaikh Shujat and Munawar, thus, sufficient evidence has been collected by the prosecution against applicants/accused that they are involved in monitory corruption, hence, they are not entitled for

the concession of bail. He has relied upon the cases of (1) Rana Muhammad Arshad v. Muhammad Rafique and other (PLD 2009 Supreme Court 427), (2) Fqir Muhammad and 2 others v. The State (2010 YLR at page 460), (3) Mir Muhammad and others v. National Accountability Bureau (2020 SCMR 168 at Page 171), (4) Rana Abdul Khaliq v. The State and others (2019 SCMR 1129 AT PAGE 1131), (5) Gulshan Ali Solangi & others v. The state (2020 SCMR 249 at page 251), (6) Abdul Aziz Memon v. The State (2020 SCMR 313 at page 314), (7) Malik Aqeel v. The State (2011 SCMR 170 at page 171), (8) Khadim Hussain v. The State (2013 YLR 2265 at page 2267), (9) Riaz Ahmed v. The State (2009 SCMR 725 at page 726), (10) Abdul Hayee v. The State (1996 SCMR 555 at page 557) (11) Haji Gul Rehman v. Imran Uddin and another (2009 SCMR 1179 at page 1181), (12) Shameel Ahmed v. The State (2009 SCMR 174 at page 176), (13) Muhammad Irshad v. The State (2015 PCrLJ 1473 at page 1476), (14) Jalal Akbar v. The State (2011 PCrLJ 754 at page 758), (15) Imtiaz Ahmed and another v. The State (PLD 1997 SC 545 at page 552 and 558), (16) Zeeshan Kazmi v. The State (PLD 1997 Supreme Court 267 at page 272), (17) Abdul Rehman Luqman v. The State (PLJ 2001 Cr.C. (Lahore) 1174 at page 1175), (18) Sajjad Hussain v. The State (PLD 1997 Karachi 165 at page 171), (19) Chaudhry Muhammad Aslam v. The State (2010 PCrLJ 1778 at page 1779) and (20) Nur Elahi v. The State (PLD 1996 SC 708 at page 713).

5. Director FIA Munir Ahmed Shaikh present in Court submits that after conducting enquiry at FIA Headquarters Islamabad, the applicants/accused prima facie were involved in the alleged offence and thereafter another enquiry was conducted in FIA Sindh Zone; hence ample opportunity was given to prove themselves as innocents as both the applicants/accused being senior officers of FIA were involved in corruption and corrupt practices, as such, detailed enquiry was conducted and both the applicants/accused were found involved in the alleged offence.

6. I have heard the learned counsel for the parties and have gone through the material available on record, it was alleged by the complainant that an enquiry in Crime No.04/2016 was initiated on

his written complaint to the Director General FIA. But I.O of the case malafidely involved him as an accused in that case. During the investigation, the complainant was arrested in the said FIR along with other Directors of the company by the I.O. Kamran Attaullah, Deputy Director Corporate, Crime Circle, Karachi, who pressurized and harassed him to pay of Rs.25 million, however, the complainant has paid Rs.24 million as gratification to the applicant/accused Kamran Attaullah and Muhammad Anwer through instalments from 19.03.2016 to 08.08.2016. Such complaint was made by the complainant to D.G. FIA, Islamabad. During the investigation, the statements of the PWs were recorded. They have supported the version of the complainant. The PW Muhammad Tariq, admits that he is an employee of co-accused Abdul Qadir Memon has paid the amount of Rs.50 lacs to the applicant/accused Kamran Attaullah in his office. Further, PW Shujjat Ali in his 161 Cr.P.C. statement stated that he has paid gratification amounting of Rs.10 million to the I.O./accused Dr. Muhammad Anwer the then Assistant Director, FIA CCC, Karachi at Lasania Restaurant, Gulistan-e-Johar for not sending the other directors of the complainant's company for trial in FIR No.04/2016. PW Muhammad Yasir has produced a ledger account which reveals that the cash amount was also paid to the accused persons and the ledger given to the FIA office shown the name of the different parties including Dr. Muhammad Anwer and Kamran Attaullah. The detail of the ledger of account 10052 and 3004 of Haji Sahab maintained at Messer Abdul Qadir in the period of 24.03.2016 to 24.06.2016 and 01.07.2016 to 08.08.2017 and produced the chart which shows that the gratification was paid to the accused persons.

7. The entire alleged transactions were made to both the applicants/accused through their frontman co-accused Abdul Qadir, as such, his computer was seized by the I.O of the case and sent to forensic examination and as per the report, it was verified that the entries in the ledger about the payment made to the applicants/accused through accused Abdul Qadir Memon. Though, it is mentioned in the report that the said entries were modified. Yet it established that there was a linking between the

applicants and co-accused Abdul Qadir. Record also reveals that the mobile phone was produced by the complainant before I.O. wherein the voice recording of accused Abdul Qadir was saved and sent for forensic examination report. The CDR of the applicants/accused is available on record which shows that there were conversations through mobile phone between the applicants/accused, absconding accused Abdul Qadir Memon as well as conversation with PW Shujjat Ali and complainant Sheikh Muhammad Munawar thus the conversation between the accused as well as complainant established that there was a connection between the parties as they were interconnected with each other.

8. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

9. At the bail stage, only a tentative assessment is to be made. The name of the applicants/accused finds place in the FIR with the specific role as stated above. The PWs have fully

supported the version of the complainant and I.O. of the case has collected sufficient material/evidence against the applicants/accused which connects them with the commission of the alleged offence. The applicants are senior officers of FIA it was expected from them that they have to investigate the cases honestly and fairly but both the applicants are involved in corruption and corrupt practices. The Director FIA present in court also submits that during investigation/inquiry both the applicants being senior officers of FIA were involved in corruption and corrupt practices. Learned counsel for the applicants/accused has failed to point out ill-will or enmity with the complainant or I.O. of the case for grant of pre-arrest bail.

10. In view of the above-learned counsel for the applicants/accused has failed to make out a case for grant of pre-arrest bail. Consequently, the interim pre-arrest bail granted by this Court to the applicants/accused vide order dated 22.01.2020 is hereby recalled and the bail application is **dismissed**.

JUDGE

Kamran/PA