

ORDER-SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. CrI. Bail Applications Nos. 34 & 35 of 2019

Date of hearing	Order with signature of Judge
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FOR HEARING OF BAIL APPLICATIONS

Date of short order: 29.07.2019

Applicants Kashif Anwar in Cr. Bail Application No. 34 of 2019 and Najam Riaz, Adnan Rauf Motiwala and Muhammad Jibrán in Cr. Bail Application No.35 of 2019 through Mr. Iftikhar Hussain, advocate.
The State through Syed Mohsin Imam, advocate.
Ch. Waseem Akhtar, Assistant Attorney General.

ORDER

FAHIM AHMED SIDDIQUI, J:- Since the applicants are involved in one and the same special criminal case; therefore, this single order is sufficient for disposal of both the aforementioned bail applications. The present applicants are seeking anticipatory bail in a case registered based on F.I.R. No. 678-DCI/STFE/Jinnah Impex/2011 lodged by Director General of Intelligence & Investigation FBR, Karachi for contravening Sections 2(37), 2(9), 2(14)(a), 3(1)(a)&(b), 6(1) & (2) (i) (ii), 8 (1)(a), (ca) & (d), 8A, 21, 22(1), 23(1), 25, 26(1) & 73 of Sales Tax Act, 1990 (hereinafter 'the said Act') which are punishable under Section 33(3, 5, 8, 11-c, 13, 16 and 18 of the said Act. Earlier, applicants remained fail to get the similar relief from the trial Court as their pre-emptive attempt was declined by the trial Court vide order dated 25.11.2017. Subsequently, applicants approached this Court by moving two different bail applications and succeeded in getting interim relief through orders dated 22-04-2019.

2. Factual matrix of the case is that the login and passwords of M/s. MAM Business International were being used by some fraudsters to file fake sales returns and issue fake sales tax invoices to generate illegal input tax adjustments/refunds amounting to Rs. 36,815,821/- used by M/s. Husnain Packages, Multan, M/s. Fazilat Enterprises, M/s. Munazza Enterprises, M/s. S.M. International and M/s. Aghaz Enterprises, Karachi. The illegal and inadmissible input tax has fraudulently been adjusted in the name of units/accused persons mentioned in FIR from serial numbers 1 to 129.

Allegedly, through this practice, a loss of Rs. 10.401 billion was caused to the government exchequer.

3. I have heard the learned counsel for the applicants and the learned Special Prosecutor and also pondered over the available documents and citations produced. On the basis of submissions made, record available and citation produced, I have observed as under:

- a) The names of the applicants do not appear in the body of F.I.R. but their names transpire in the Interim Final Report as the beneficiaries of the alleged fraudulency to evade tax, as such causing loss to the public exchequer.
- b) Since getting interim relief, the applicants are regular in attendance before this Court as well as before the trial Court.
- c) As soon as the applicants aware of their involvement in the case; they approached the trial Court but they could not get any relief, as the trial Court was laying vacant. Hence, they approached this Court and got some relief in shape of an interim order and matter was remanded to the trial Court for disposal of their bail plea on merit. After their failure to get interim bail confirmed by the trial Court; the applicants again approached this Court and succeeded in getting the interim order referred above.
- d) Although the names of the applicants appear in the supplementary charge-sheet but it is not deciphering the role assigned to the applicants i.e. in what way they are involved and even if they are beneficiary then up to what extent they were benefitted from the act of main accused.
- e) Allegedly; it was revealed after investigation that the login and password of M/s. MAM Business International were used by some fraudsters but the record is silent about hacking of login and password.
- f) There are chances of leaking or 'passing off' in respect of the login and password from M/s. MAM Business International, and on this aspect the investigators did not bother to probe.

- g) Per para 11.14 of the interim charge-sheet, the investigator yet not succeeded in tracing out the phone number, device, location and base station of the IP address from where the said invoices are generated. Rather it is revealed from the interim report that PTA is unable to locate the longitude and latitude to pinpoint the address due to lapse of time.
- h) Per para 11.15 of the interim charge-sheet, the real offender, who is behind the generation of fake sales tax invoices, is yet not traced out
- i) It is forcefully argued that the amount claimed should be assessed after proper adjudication and without it the same cannot be assessed by the Investigation Officer, who is not competent in the assessment of tax. I am of the view that such contention is not without weight.
- j) It is also contended that the matter is still under adjudication as such the applicants have been implicated in the case prematurely, as if the adjudication will end up in favour of the applicants; the entire case will become doubtful. I am of the view that such contention is also required serious pondering in the matter.
- k) In the above backdrop, it can be stated that the case against the applicants needs further probe. Besides, they are businessmen and when documentary evidence is available, their arrest will be least beneficial for the prosecution of the case.

4. In view of the above observation, I am of considered opinion that a case of pre-arrest bail has been successfully made out in favour of the applicants as such the interim bail orders passed in their favour are confirmed on the same terms and conditions.

5. Before parting, I would like to make it clear that if any of the applicants after confirmation of pre-arrest bail will not appear before the trial Court and the trial Court is satisfied that the he becomes absconder and fugitive to law and trial, then the trial Court is fully competent to take every action against him

and his surety including cancellation of bail without making a reference to this Court.

6. These are the reasons for my short order dated 29-07-2019 and I would like to make it clear that, the above observations are purely tentative in nature, and the same are only for the purpose of disposal of instant pre-arrest bail applications and would have no impact or effect on either party's case during trial.

JUDGE

Dated: _____