

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-113 of 2019  
Criminal Bail Application No.S-738 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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27.09.2019

Mr. Zulfiquar Ali Abbasi advocate along with applicant Naveed Mumtaz Abbasi who is present on interim pre-arrest bail.

Mr. Muhammad Saleem Leghari advocate along with applicant Abdul Naveed who is present on interim pre-arrest bail.

Ms. Safa Hisbani A.P.G. Sindh along with Mr. Javed Halepoto D.D. ACE Jamshoro, Mr. Jawad Karim A.D (L) ACE Jamshoro and Mr. Ghulam Ali Bozdar C.O ACE Sujawal.

## ORDER

**Amjad Ali Sahito, J:-** Through these bail applications, the applicants/accused namely, Naveed Mumtaz Abbas son of Mumtaz Ali Abbasi and Abdul Naveed son of Abdul Qadir soomro seek pre-arrest bail in Crime No.05/2019 for the offence under sections 409, 467, 468, 471, 474, 477-A PPC read with section 5 (2) Prevention of Corruption Act-II of 1947, registered at Police Station ACE Thatta, whereby the bail pleas of the applicants/accused were declined by the learned Special Judge, Anti-Corruption (Provincial) Hyderabad vide order dated 24.01.2019 and 08.07.2019 respectively.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused have mainly contended that the applicants/accused are innocent and have falsely been implicated in this case; that there is no material available on record to connect the applicants/accused with the commission of alleged offence; that the evidence is completely depending upon the documentary record, which is in possession of Anti-Corruption Police and there is no apprehension of tampering with it by the applicants/accused; that the FIR is delayed for about five years but no plausible explanation has been furnished by the prosecution; that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. except 409 PPC which requires further probe. According to learned counsel, the case of

the applicants/accused requires further inquiry and their interim pre-arrest bail is liable to be confirmed.

4. Mr. Zulfiqar Ali Abbasi advocate for applicant Naveed Mumtaz Abbasi further added that the applicant was office Superintendent in the office of District Council Thatta but neither he was custodian of the alleged cheques nor there is his writing even he is not beneficiary of the withdrawal amount, however, he has implicated falsely with *mala fide* intention and ulterior motives otherwise, there is no direct evidence against him. He further submitted that there is no material brought on record to show that any complaint to the bank authorities was ever made for stoppage of payment regarding theft or missing of such cheques. He prayed for confirmation of interim pre-arrest bail.

5. Mr. Muhammad Saleem Leghari advocate further added that the applicant Abdul Naveed has not committed any offence as he after fulfillment of all requisite formalities played his role. According to him, the applicant is not authority to give clearance and sign on cheques without the instructions of Manager and Operational Manager and the applicant has no role in such transaction, hence, the case of applicant requires further inquiry and his bail is liable to be confirmed.

6. On the other hand, learned A.P.G. vehemently opposed the confirmation of bail to the applicants/accused on the ground that they in connivance with each other are involved in the misappropriation of amount, criminal breach of trust with common intention and ulterior motives and causing loss to the government exchequer, hence, they are not liable for any concession and the interim pre-arrest bail granted to them is liable to be dismissed.

7. I have considered the submissions of the learned counsel for the applicants/accused and learned A.P.G. for the State and have gone through the material available on the record.

8. Allegation against applicant/accused Naveed Mumtaz Abbasi is that while he was posted as a Office Superintendent, District Council, Thatta has fraudulently withdrawn an amount to Rs.76,00,000/- with forged signatures of Muhammad Hanif Brohi, Assistant Accounts Branch District Council, Thatta from Account No.3463-1 and transferred in account No.1797-1 of NBP Makli Branch, Hyderabad Region, hence, with connivance of applicant/accused Abdul Naveed and other co-accused has misappropriated the same and caused wrongful loss to the government. Record reflects that the applicant/accused Naveed Mumtaz Abbasi withdrawn an amount of Rs.76,00,000/- from the account bearing No.3463-1 of District Council Thatta

and transferred in Account No.1797-1 in the National Bank of Pakistan Makli Branch, Hyderabad Region. With regard to withdrawal of the alleged amount the applicant has failed to satisfy as to how and under what capacity and why said amount was withdrawn. The misappropriation of the huge amount was flashed out in the investigation on a complaint of Chief Officer, District Council Thatta. As per claim of the applicant that he has been implicated in the instant case if it is believed then he has to pin point and show material of his exoneration but he failed to bring such record or pin point, however, *prima facie*, there is sufficient material against him for the commission of alleged offence as withdrawal of such huge payment appears to be based on *mala fide*. Even all the P.Ws during investigation have implicated the applicant/accused Naveed Mumtaz Abbasi, hence, he has given loss to government exchequer by committing criminal breach of trust.

9. As far as delay in registration of FIR is concerned, in the cases of Anti-Corruption the inquiries and approval for registration of FIR take some time as the documents on which the authorities rely are to be collected. The inquiry report and material collected by the Investigation Officer appears to be convincing and *prima facie* connect the applicant/accused Naveed Mumtaz Abbasi in the commission of offence. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or police. No *mala fide* has been pleaded by the learned counsel for the applicant/accused Naveed Mumtaz to believe that he has been falsely implicated in the case by the complainant or Inquiry Officer/Investigating Officer and he has failed make out the case for further inquiry. In this context, the reliance is placed to the case of '**Mukhtar Ahmad v. The STATE and others**' [2016 SCMR 2064]. It is well-settled principle of law that the deeper appreciation of evidence is not permissible at the bail stage and only tentative assessment is to be made. The reliance in this context is made to the case of '**Mehmood Akhtar v. Nazir Ahmed**' [1995 SCMR 310].

10. Now coming to the role as assigned upon the applicant/accused Abdul Naveed, he has been booked with the allegation that he has identified the signatures of DDOs and signatures of amount receiving person so also put his signatures on the cheques and made payment to the persons. As per investigation, co-accused Irshad Ali Shaikh while posted as Officer Grade-III at NBP Makli Branch, Thatta passed 11 cheques brought by applicant/accused Naveed Mumtaz Abbasi after checking balance, deducted the balance from the account and forwarded the cheques for payment to the applicant/accused

Abdul Naveed Soomro. Allegedly the cheques amount, balance of the account was verified and the deduction of the amount was made by co-accused Irshad Ali Shaikh, Operational Manager, hence, only the role assigned against the applicant/accused Abdul Naveed is that being Custom or Facility Officer he has made payment of the amount of all cheques. Nothing has been brought on record that the applicant/accused in connivance of other accused persons has made the payment, if any role assigned against the applicant/accused Naveed Soomro for payment amount in connivance of co-accused, it will be determined at the trial. *Prima facie*, the allegations as leveled against the applicant/accused Abdul Naveed requires further inquiry as his case is totally different to that of applicant/accused Naveed Mumtaz Abbasi.

11. In view of above, Criminal Bail Application No.S-113 of 2019 is **dismissed** and the interim pre-arrest bail granted to applicant/accused Naveed Mumtaz Abbasi vide order dated 29.01.2019 is hereby recalled. While Criminal Bail Application No.S-738 of 2019 is **allowed** and the interim pre-arrest bail granted by this Court to the applicant/accused Abdul Naveed vide order dated 11.07.2019 is confirmed on the same terms and conditions as contained in it. The trial Court is fully authorized to take action against the applicant/accused without making any reference to this court if he fails to attend it.

12. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

**JUDGE**