

Order Sheet

**IN THE HIGH COURT OF SINDH BENCH AT
SUKKUR**

Criminal Bail Application No. S – 90 of 2021
Criminal Bail Application No. S – 152 of 2021
Criminal Bail Application No. S – 154 of 2021

M/s Abdul Majeed Memon and Abdul Samad, Advocates for applicants in Cr. Bail App. No. S-90 and S-154 of 2021.

Mr. Iqbal Hussain Joyo, Advocate for applicant in Cr. Bail App. No. S-152 of 2021.

Mr. Munir Ahmed R. Siyal, Assistant Director (Legal) FIA Sukkur.

Date of hearing: **14-06-2021**

Date of announcement: **21-06-2021**

ORDER

Khadim Hussain Tunio, J. – By this common order, I intend to dispose of the aforementioned Criminal Bail Applications, as the same are outcome of the same FIR.

2. Applicants Muharam Ali son of Qadir Bux, Jamshed Farooq son of Farooq Ahmed and Khalil Ahmed son of Muhammad Ramzan seek their admission to post-arrest bail in Crime No.18 of 2020, registered at Police Station Federal Investigation Agency (*FIA*), Cyber Crime Reporting Center (*CCRC*), Sukkur, for offences punishable under Sections 3, 4, 13 and 14 of Prevention of Electronic Crimes Act, 2016 read with Sections 109, 406, 419, 420, 468 and 471 PPC. Earlier, they approached the learned Judicial Magistrate-I, Sukkur for the same relief by filing first bail application, but it was declined to them vide order dated 31-12-2020. Thereafter, they moved second bail application before the learned Additional Sessions Judge-III, Sukkur, which has also been dismissed vide order dated 25-01-2021.

3. Precisely, facts of the prosecution case, as unfolded in the FIR bearing Crime No.18 of 2020, lodged by FIA, CCRC, Sukkur on 17-12-2020 at 2100 hours, are that a complaint / letter was received from Jameel Ahmed Shaikh, Divisional Director, Benazir Income Support Programme (*BISP*), Sukkur Division, by which he provided list of 25 retailers of Habib

Bank Limited (**HBL**), received from BISP Headquarter, who were involved in fraudulent auto-withdrawals and it was requested to register a case against them. HBL E-Konnect authorities informed the FIA that Agent ID No.120647, being involved in illegal auto withdrawal of amount of beneficiaries of BISP, was entrusted to their agent Abdul Hanan (applicant), owner of Hanan Mobile Shop and after receipt of complaint from BISP, HBL E-Konnect authorities confiscated the retailers' biometric devices and their accounts were blocked and said confiscated devices were handed over to the FIA. On inquiry, it was disclosed by applicant Abdul Hanan that he shared his agent ID No.120647 and his device HBPRO20440 with applicant Muharam Ali of District Rahim Yar Khan for fraudulent and illegal auto-withdrawal. Applicant Muharam Ali revealed that applicants Khalil Ahmed and Jamshed Farooq were his partners in crime. It is alleged that 267 fake thumb impressions, were made by the applicants for fraudulent and illegal withdrawals of beneficiaries' amount. A raid was conducted by the FIA at the house of Muharam Ali on pointing out by the applicants and 267 cloned thumb impressions, one device for making cloned thumbs, one laptop, one HBL E-Konnect BVS device and four silicon rubber sheets were recovered. It was established that applicant Abdul Hannan, applicant Jamshed Farooq, co-accused Khalil Ahmed and applicant Muharam Ali had fraudulently withdrawn the amount of actual beneficiaries and usurped the same. It was also discovered that CNICs of deceased persons were also used in this crime. Subsequently, FIR was lodged with approval of competent authority against the applicants.

4. M/s Abdul Majeed Memon, Abdul Samad and Iqbal Hussain Joyo, learned counsel for applicants, contended that the applicants are innocent and have falsely been implicated in this case; that there is unexplained delay in lodging of the FIR as the prosecution has failed to mention the date and time of the alleged commission of the offence; that no independent witness has been associated as *mashir* in this case; that the offences punishable under the Prevention of Electronic Crimes Act, 2016 are bailable; that names of persons, on whose behalf the amount has allegedly been drawn by the applicants, have not been mentioned; that no complaint has been filed by the private persons or the alleged beneficiaries of BISP to

prove the alleged fraud; that the case of applicants is of further inquiry and requires evidence; that the entire case is based upon the documentary evidence which is now with the FIA and there is no chance of tempering by the applicants; and that previously applicants have no criminal record. Lastly, they prayed for grant for post-arrest bail to the applicants.

5. On the other hand, Mr. Munir Ahmed R. Siyal, learned Assistant Director (Legal) FIA Sukkur contended that the instant FIR has been lodged upon the complaint received by the Divisional Director, BISP, Sukkur Division, who has no enmity with the applicants; that sufficient material for connecting the applicants with the commission of offence is available on the record; and that applicants / accused have committed heinous offence of usurping the amount of poor people by way of fraud. He, therefore, prayed for dismissal of the instant Criminal Bail Applications.

6. Heard the learned counsel for the applicants and learned Assistant Director (Legal) FIA Sukkur so also perused the material available on record with their assistance.

7. It is a matter of record that the applicants, in collusion with each other co-accused Khalid Hussain illegally and fraudulently made auto-withdrawal transactions by using CNICs of people registered with the Benazir Income Support Programme. Often, Courts do not indulge in deeper appreciation of evidence/material at bail stage, this Court has to form its opinion on tentative assessment of record. After receiving a complaint along with a list of 25 retailers, HBL E-Konnect was contacted and HBL E-Konnect authorities informed the FIA that Agent ID No.120647, being involved in illegal auto withdrawal of amount of beneficiaries of BISP, was entrusted to their agent Abdul Hanan and was revoked. His arrest then led to the finding that the present applicants were in constant contact with applicant Abdul Hanan and co-accused Khalid Hussain and were all involved in the misappropriation through various HBL E-Konnect Agent IDs and then by using the CNICs and fake thumb impressions of those enlisted within the Benazeer Income Support Programme, even those belonging to deceased women. Subsequently, a raid

was conducted by the authorities at the house of Muharam Ali where 267 cloned thumb impressions, a device for making those cloned thumbs, a laptop, an HBL E-Konnect BVS device and four silicon rubber sheets were recovered. Sufficient material was recovered to show the applicants' connection to the alleged offence by also showing that the E-Konnect devices were shared between the group.

8. Under the principle of law and justice, each bail petitions is to be decided on its own and the law applicable thereto, however, this Court cannot remain oblivious of the undeniable fact that the tendency of corruption in every field, has become a threatening danger to the State economy, striking it at its roots. Public money that is allocate for the welfare of social sector and economic well-being of the poor folk is constantly being embezzled/misappropriated at a large scale and that is why at present, a majority of the country's population is deprived of basic essential rights and daily needs such as pure drinking water, health care and education. This money, instead goes into the bank accounts of the embezzlers who then enjoy their ill-gotten gains and leech off of the public money. We have come to a stage where it must become the prime aim of any legal institute including the judiciary to end this monstrosity at this stage before it goes out of proportion, posing a threat to the very survival of the state's economy and its citizens.

9. The argument of learned counsel for the applicants that the offence with which the applicants are charged does not fall within the prohibitory clause of section 497, Cr.P.C. and in such like cases, bail is a rule and refusal an exception, is of little help to him. No doubt, bail in offences punishable with less than ten years of imprisonment is ordinarily granted as a rule, however, the concession is to be extended having regard to the facts and circumstances of each case and in appropriate cases, the Court may justifiably depart from the rule to deny the favour. While the offences charged do not fall within the prohibitory clause of S. 497 Cr.P.C, in such like cases the grant of bail is not a right of the accused, rather a concession and since the applicants are involved in crimes against the society at large, this Court is inclined to not show leniency in his case as the offence with which he is charged affects the whole society and the impact of this crime

is devastating not only to those who are being stolen from, but also the State. Moreover, crimes of nature alike the ones in this case are quite distinguishable from ordinary criminal offences and guidance in this regard can be taken from the principles laid down by the Hon'ble Supreme Court of Pakistan in the case of *Imtiaz Ahmed v. State (PLD 1997 SC 545)*, wherein in para-7 of the judgment it was observed as follows:--

"7. I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by an individual in his private capacity and an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497, Cr.P.C. in the absence of an exceptional circumstance may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentences is less than 10 years' R.I. for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.

The Courts should not be oblivious of the fact that at present Pakistan is confronted with many serious problems/difficulties of national and international magnitude, which cannot be resolved unless the whole Pakistani nation as a united entity makes efforts. The desire to amass wealth by illegal means has penetrated in all walks of life. The people commit offences detrimental to the society and the country for money. Some of the holders of the public office commit or facilitate commission of offences for monetary consideration. In the above scenario the Courts' approach should be reformation-oriented with the desire to suppress the above mischief. To achieve the above objective, it is imperative that the Courts should apply strictly the laws which are designed and intended to eradicate the above national evils but at the same time, they are duty bound to ensure that the above approach should not result in miscarriage of justice."

10. In today's society, indulging in corrupt practices and misappropriation of funds meant to be allocated to the needy has become a de facto recognized norm of our society, which is corroding the entire

edifice of our State. If serious steps are not taken to curb the menace of gnawing corruption at this point in time, then this country will not be able to tackle the tumor that will grow to an advanced stage which we will not be able to handle. In view of the above reasons, prima facie, there appear to be reasonable grounds for disentitling the applicants from the concession of bail. Consequently, instant bail applications of the applicants are dismissed for the reasons.

11. Needless to mention here that the observations made herein above are tentative in nature and shall not affect the merits of the case at the trial.

Basit Ali

J U D G E