

Order Sheet

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

Criminal Bail Application No. S – 291 of 2021

Mr. Muhammad Rehan Khan Durrani, Advocate for applicant.
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. – Through instant bail application, applicant Shakeel Ahmed son of Bashir Ahmed seeks his admission to post-arrest bail in Crime No. 10 of 2021, registered at Police Station Federal Investigation Agency (*FIA*), Cyber Crime Reporting Center (*CCRC*) Sukkur, for the offences punishable under Sections 3, 4, 13, 14 and 16 of Prevention of Electronic Crimes Act, 2016 read with Sections 109, 406, 419, 420, 468 and 471 PPC. Previously, applicant sought the same relief before the learned Judicial Magistrate-I, Sukkur, but the same was dismissed vide order dated 03-05-2021. Afterwards, he preferred a second bail application before the learned Additional Sessions Judge-V, Sukkur, which too was dismissed vide order dated 08-05-2021.

2. In a nutshell, prosecution case as reflected in the FIR bearing Crime No. 10 of 2021, registered by FIA (CCRC) Sukkur on 20-04-2021 at 2000 hours is that on the basis of the written complaint filed by one Rahim Bakhsh Rathore, Divisional Director of the Benazir Income Support Programme (*BISP*), Larkana Division against retailers of Habib Bank Limited (*HBL*) involved in fraudulent auto-withdrawals of amounts of beneficiaries of BISP. Instant FIR was registered against co-accused Khalid Hussain Khoso, owner of Mansoor Mobile Shop. HBL E-Konnect authorities apprised the FIA that Agent ID No. 119383, having involved in the said crime, was entrusted to co-accused Khalid Hussain, who was representing them as his agent and upon HBL E-Konnect authorities

receiving a complaint from BISP, they confiscated the retailer's biometric device and his login ID was blocked. Later on, the said confiscated device was given to the FIA. Afterwards, co-accused Khalid Hussain was arrested and from his possession a mobile phone and another HBL E-Konnect device having agent ID No. 131191 were secured, for which he admitted that it was obtained by him in the business name 'Ayan Communication' after closing of previous agent ID No. 119383. Co-accused Khalid Hussain also admitted his guilt regarding fraudulently withdrawing the amount of beneficiaries of BISP and usurping that amount. Hence, FIR was lodged with the approval of competent authority against co-accused Khalid Hussain. Subsequently, name of the applicant was joined by the Investigating Officer after recording of statement of co-accused Khalid Hussain.

3. Learned counsel for applicant argued that the applicant is innocent and has been falsely implicated in the present case since he refused to fulfil the illegal demands of officials from FIA; that the applicant has been joined as accused on the basis of statement of co-accused Khalid Hussain, which is inadmissible as per Article 38 of the Qanun-e-Shahadat Order, 1984; that the applicant is officer of Ufone company and has an unblemished service record; that nothing incriminating has been recovered from possession of the applicant; that prosecution has failed to bring direct evidence against the applicant for connecting him with the commission of alleged offence; and that the case of applicant requires further inquiry.

4. Conversely, learned Assistant Director (Legal) FIA Sukkur argued that the basis of the present case is a written complaint filed by the Divisional Director, BISP, Larkana Division and no enmity existed against the applicant; that sufficient material is available on the record against the applicant, particularly his conversation with co-accused Khalid Hussain; and that applicant has committed a repulsive crime of taking the amount of poor people by way of fraud, especially one of a deceased person. Lastly, he prayed that present Criminal Bail Application may be dismissed.

5. Having heard the learned counsel for the applicant and learned Assistant Director (Legal) FIA (CCRC) Sukkur and have also perused the material available on record with their able assistance.

6. It is a matter of record that the applicant, in collusion with 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, HBL E-Konnect was contacted and Agent ID No. 119383, found to be issued to co-accused Khalid Hussain was found involved and was revoked. His arrest then led to the finding that the present applicant was in constant contact with the co-accused and were both involved in the misappropriation through various HBL E-Konnect Agent IDs and then by using the CNICs of those enlisted within the Benazeer Income Support Programme, even one belonging to a deceased lady made on 01.01.2017. The investigation officer also recording voice and text records between the applicant and co-accused regarding the transfer of illegal transactions.

7. Under the principle of law and justice, each bail application 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.

8. The argument of learned counsel for the applicant that the offence with which the applicant is 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 applicant is 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."

9. 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 applicant from the concession of bail. Consequently, instant bail application of the applicant is dismissed for the reasons.

10. 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

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