

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

*Cr. B. A. No. S-452 of 2020*  
*Cr. B. A. No. S-453 of 2020*  
*Cr. B. A. No. S-454 of 2020*  
*Cr. B. A. No. S-458 of 2020*  
*Cr. B. A. No. S-459 of 2020*  
*Cr. B. A. No. S-461 of 2020*

Date	Order with signature of Judge
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For hearing of bail application

**Date of hearing.**                                **10-09-2020**  
**Date of announcement.**                       **14-09-2020**

M/s Jaffar Ali Shah, Shabir Ali Bozdar, Mehfooz Ahmed Awan and Aijaz Ahmed Naich Advocates for the applicants.

Mr. Zulfiqar Ali Jatoi APG

**ORDER**

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**KHADIM HUSSAIN TUNIO, J.-** By this single order, I intend to dispose of the captioned Cr. Bail Applications u/s 497 Cr.PC, filed on behalf of the applicants/accused Mushtaq Ali, Rasheed Ahmed, Abdul Rasheed, Rasheed Ahmed son of Shah Ali, Zulfiqar Ali, Chiloo Ram, Muhammad Ajmal, Roshan Ali and Cr. Bail Applications u/s 498-A Cr.PC filed on behalf of the applicants/accused Sardar Bux, Abdul Hafeez and Faheem Azhar, as same are the outcome of one and same Crime No.02/2020, offence u/s 161, 34 PPC, r/w S. 5(2) Act-II 1947 registered at PS ACE Ghotki.

2.                It is alleged that the applicants along with rest were transporting wheat from Sindh Province to Punjab Province after receiving illegal gratification by misusing their authority due to which a raid was conducted and illegal gratification money had been secured from apprehended accused on spot, for which case was registered against the accused on behalf of the state by the complainant.

3. Mr. Jaffar Ali Shah Advocate for applicants appearing in Cr. B.A No.S-459 of 2020 argued that the FIR was registered on oral direction; that there is violation of section 103 Cr.PC in this case; that the proceedings at the spot were not supervised by the Magistrate as the offence took place at National Highway; that no conversation between the accused persons has been produced by the complainant party; that the interim challan of the case has been submitted wherein four accused namely Dur Muhamad, Amanullah, Rahul Lund and Shaban Lal have been nominated in this case. In support of his contention, he has relied upon case law reported in **2019 YLR 255, 1999 P.Cr. L J 503** and **2012 MLD 1945**.

4. Mr. Mehfooz Ahmed Awan Advocate for applicant appearing in Cr. B.A No. 452/2020 argued that there is clear violation of section 11 of Sindh Enquiries and Anti-corruption Rules; that no prior approval was obtained to register the FIR; that section 161 PPC is bail able and section 5(2) of Anticorruption Act does not fall within the prohibitory clause of Section 497 Cr.PC; that the applicant/accused Sardar Bux was not arrested at the spot and no recovery whatsoever has been effected from him; that no any identification parade of the applicant/accused was held, therefore he prayed for grant of pre-arrest bail to the applicant/accused. He relied upon case law reported in **2006 P.Cr. L J 1034**.

5. Mr. Shabir Ali Bozdar Advocate for applicants appearing in Cr. B.A No.453, 454 and 461 of 2020, contended that the five officials of complainant party arrested eight accused persons after conducting raid; that no any entry of departure or arrival was made at Sukkur; that the wheat does not belong to Government of Sindh; that all the PWs are police officials; that the applicants Mushtaq Ali, Rasheed Ahmed and Abdul Rasheed are police officials and they have no concern with the Food Department; that applicants/accused Abdul Hafeez and Faheem Azhar were not arrested at the spot and their names were disclosed by the co-accused; that no any identification of applicants/accused was held; that the applicants/accused

have joined the investigation/trial. In support of his contention he has placed reliance on cases reported in *2020 YLR Note 54, 2017 MLD 146, PLD 2017 SC 733, 2017 P.Cr. L J 1067, 2017 YLR Note 337* and *2013 P.Cr. L J 1051*.

6. Mr. Aijaz Ahmed Naich Advocate for applicants in Cr. B.A No.458/2020 argued that the applicants Chillo Ram and Muhammad Ajmal are private persons and no any role has been played by them; that the applicant/accused Muhammad Ajmal is driver of the truck, he therefore prayed for grant of bail to the applicants/accused.

7. Conversely Mr. Zulfiqar Ali Jatoi learned APG for the State contended that the Government has imposed ban upon transportation of wheat; that the statements of accused persons were recorded and no violation of Section 11 was made by the complainant party; that there is no malafide on the part of complainant party. In support of his contention he has relied upon case law reported in *2009 P.Cr. L J 732, 2013 YLR 2265* and *2020 SCMR 841*.

8. I have considered the arguments advanced by the learned counsel for the applicants/accused and learned APG for the State and have perused the material available on record with their able assistance.

9. It is a matter of record that the Government had issued a ban on the transport of wheat from Sindh to Punjab. Allegedly, the applicants, by bypassing that ban, attempted to move a trailer full of wheat sacks from Sindh to Punjab by means of illegal gratification. Such information was received by the police and simultaneously a raid was conducted and the applicants were caught in the act. The bribed amount was recovered from the officials present on the spot and wheat was also found in the trailer. A perusal of record, from the face of it, shows that the offence with which all the applicants/accused are charged with is one of serious nature. It is a matter of record that the proceedings were initiated on the basis of spy information received by complainant. The applicants, in collusion with each other, were managing the transport of wheat bags from Sindh to Punjab

after a ban on the same had been issued. After the raid, several applicants/accused were arrested whereas the rest were arrested after their names were disclosed to the raiding party by the accused. All the applicants have been attributed a role and a set amount received by them as bribe is also available on record. The applicants have failed to provide any evidence to suggest their false implication in the case and even otherwise, at bail stage a court is to observe whether sufficient iota of evidence is available against the applicants or not. In the present case, there is sufficient iota of evidence against the applicants as stated above to connect them with the alleged offence and the same is also available on file. The prosecution witnesses in their 161 Cr.P.C statements have fully implicated the applicants with the commission of alleged offence. The counsel for applicants have raised several questions with regard to proceedings such as the fact that all the P.Ws were ACE Police Officials and none from the public had been cited as private witnesses. Needless to state that police officials are as good witnesses as any other and unless a *malafide* on the part of the arresting party is brought forward, such an argument would remain invalid. Moreover, the learned counsel for the applicants have argued that the case of the applicants does not fall within the prohibitory clause of S. 497 Cr.P.C. In this regard, it is pertinent to mention here that the Hon'ble Apex Court has time and again decreed that the grant of bail in cases that do not fall within the prohibitory clause is not a universally applicable rule. In this respect reliance is placed on the case law reported as *Shameel Ahmed v. The State (2009 SCMR 174)*. Bail cannot solely be granted just because an offence does not fall within the prohibitory clause and several other aspects of the case need consideration. Coming to the establishment of *malafide*, it is an essential part in the grant of bail to the applicants. The applicants, in the present case, have failed to establish any *malafide* on the part of the raiding party and have failed to prove that their arrest is meant to solely humiliate them. In this respect, reliance is placed on the case law reported as *Mukhtar Ahmed v. The State*

*and others (2016 SCMR 2064)*. Such a failure in establishing *malafide* on the part of the applicants greatly disentitles them of the concession of bail.

10. So far the contention of learned counsel for the applicants is concerned that no permission was obtained to register the case and that the magistrate had not accompanied the raiding party in the raid, here Section 11(2) of Sindh Enquiries and Anticorruption Establishment Rules 1993 reproduced hereunder for ready reference:

*“(2) No criminal case shall be registered against accused Public Servant without prior approval of the ‘Competent Authority’.*

*Provided that such prior approval shall not be necessary for registration of case against Public Servant **likely to be caught red handed as a result of raid/trap**, arranged by Establishment under the supervision of a Magistrate and in case of his non availability the **Gazetted Officer of the Establishment.**”*

***(emphasis provided)***

11. It is clear from the above provision of the law that a permission to register case against a public servant would not be required if they are caught red handed in the commission of the offence. Moreover, in the present case the magistrate was unavailable during proceedings, however was replaced by the Deputy Director ACE, Sukkur being a gazetted officer of the establishment.

12. In a recent case entailing the grant of bail in case involving the anti-corruption ordinance, reported as *Muhammad Islam v. The State through Advocate General Punjab, Lahore and others (2020 SCMR 841)*, the Hon’ble Apex Court has been pleased to observe that:-

*“3. Principles, applicable to grant of anticipatory bail in a cognizable/non-bailable offence are by now well entrenched; these do not admit denials or parallel stories to ward off evidence/material prima facie constituting the offence nor the witnesses can be stripped off their credentials at the investigative stage so as to divert the usual course of law; a claimant must point out circumstances, reasonably suggesting abuse of process of law with strappings of mala fide, lurking behind the intended arrest; statements of 61 persons with diverse and different backgrounds, clamouring foul play cannot be summarily brushed aside to accommodate petitioner’s plea; same goes for a detailed and comprehensive investigative process, carried out pursuant to call up notice, followed by an inquiry, findings whereof, are prima facie pointed upon petitioner’s culpability for an offence wherein grant of bail is narrowly jacketed. Petition fails. Leave refused.”*

13. The transport resulting into moving of wheat into Punjab by bypassing a government sanctioned ban is detrimental to society as a whole and I feel it justified and appropriate to not exercise discretion in favour of the applicants, amongst whom are public officers, involved in this case. Public officers who allegedly aided and/or abetted in the commission of such crime who are charged with an offence u/S 5(2) of Act II of 1947 or under any other provision of the P.P.C or any other law where the offence is non-bailable but carries sentence less than 10 years' rigorous imprisonment. Our country is confronted with many serious problems of magnitude ranging from national to international. Our society has fallen prey to the social evils like lust and greed and the desire to amass wealth by any means necessary has corrupted all walks of life. Many personnel of the state functionaries that are entrusted the duty to protect the life, property and honour of citizens either actively participate in the commission of heinous crimes or provide a cover-up to criminals. In the present case, I have not found any reasons presented to this Court for the grant of bail to the applicants, who allegedly in their official capacity furnished the means to the driver and owner of a trailer by helping them transport wheat while receiving illegal gratification for themselves.

14. In view of above, the applicants/accused have failed to make out their case for grant of bail, therefore, the instant bail applications are dismissed. Consequently, the orders for grant of interim pre-arrest bail to applicants namely Sardar Bux, Abdul hafeez, Faheem Azharare hereby recalled.

15. Needless to mention here that the observations made herein above are tentative in nature and would not prejudice the case of either party at trial.

**J U D G E**