

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

CR. B.A. No. 2065 OF 2020

Date	Order with signature of Judge
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BEFORE:
MR. JUSTICE ARSHAD HUSSIAN KHAN

Mushtaq Masih Vs. The State

Mr. Muhammad Shafiq, Advocate for applicant.
Syed Shafqat Hussain Shah, Advocate for complainant.
Mr. Talib Ali Memon, A.P.G. a/w SI Muhammad Sher Zaman Awan,
Anti-corruption, South Zone, Karachi.

Date of Hg: 06.04.2021

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ARSHAD HUSSAIN KHAN, J: The applicant / accused namely, Mushtaq Masih son of James Masih, through the above bail application has sought post-arrest bail in the case bearing F.I.R. No. 16/2020 of A.C.E. [South] Karachi, registered under Section 161/34 PPC r/w Section 5(2) of Prevention of Corruption Act-II of 1947.

2. Brief facts of the prosecution case, as narrated in the F.I.R., are that this FIR was re-registered on behalf of State as per order of Deputy Director, Anti-Corruption Establishment, South Zone, Karachi vide order No.DD/ACE/K/SZ/2020/1475K dated 02.11.2020, consequent upon an enquiry initiated in compliance of orders passed by Learned Additional District & Sessions Judge-III, Karachi, South, into S.C. No. 177/2020 on 10.03.2020, whereby it was ordered that the scheduled offences be sent to the Director, Anti-corruption Establishment Sindh.

3. As per the contents of FIR No.498/2019 u/s 342/34 PPC r/w 365 P.P.C. of police station Boat Basin, Karachi, the complainant Ashiq Hussain son of Abdul Wahid r/o House No.4, Street No.1, Sector 6/9, Mehran Town, Korangi, Karachi, alleged that he is a driver in Careem Company. After finishing his duty, he returned at his

house in Mehran Town where he found his children available whereas his wife was missing. Therefore, he started calling his wife. Then the neighbor women informed him that the police had come at his house and took away his wife. He searched for his wife, here and there, but could not find her clue. Then, he filed an application before the District Judge, South, Karachi. While he was present in Court, his wife informed him on phone that she was present in Narcotics Police Station near License Branch Clifton. She told him to give them amount and take her. The District Judge appointed JM-VI South and sent him at Excise Police Station, while his counsel Shafqat Hussain also reached at Excise Police Station. Then, his wife was recovered from there and two persons were also present there, who had confined his wife Nusrat Bibi. Their names were found to be Muhammad Asif son of Sanaullah and Bashir Ahmed son of Ghulam Hussain. Learned Magistrate called SI/DD Muhammad Riaz of Local Police and handed over the custody of Mst. Nusrat Bibi to her husband. Upon the orders of learned Judicial Magistrate, SI Muhammad Riaz Duty Officer, P.S. Boat Basin, arrested them, accordingly. Thereafter, FIR No.498/2020 was registered at P.S. Boat Basin, which has been incorporation in the present FIR, hence this bail application.

4. Learned counsel for the applicant/accused argued that applicant/accused is innocent and he has no concern with the alleged incident as the prosecution has re-registered the FIR, hence mandatory provisions of the special law has clearly been violated therefore the applicant/accused is entitled for grant of bail. Further submits that applicant/accused is behind the bar since his arrest i.e. 04.02.2020 and almost 14 months have been passed but the matter has not been proceeded at any forum due to jurisdictional point and the same is beyond the control of the applicant/accused. He further contended that co-accused Abdul Muneem and Bashir Ahmed Jafferri have granted bail before arrest by the Special Judge Anti-Corruption while the case of the present applicant/accused is on the same footings. He argued that the contents of FIR do not constitute any offence against the present applicant as alleged. Further neither the name of the applicant/accused is appearing in the body of FIR nor the alleged detinue has been recovered from his possession or pointation. Further argued that there are two FIRs of the alleged incident i.e. one has been

lodged by Ashiq Hussain, the complainant of the initial FIR i.e. FIR No. 498/19, u/s 342/34 PPC PS Boat Basin Karachi while second FIR No. 1442/2020, u/s 457/354/395/342/161/511 PS K.I.A. has been registered by his wife Mst. Nusrat Bibi of the same incident as such the malafide intention of the complainant and in the second FIR No. 1442/2020 applicant/accused obtained bail before arrest in Crime No. 1442/2020 against Rs.30,000/-. Also argued that two co-accused persons Muhammad Asif son of Sanaullah and Bashir Ahmed son of Ghulam Hussain have been enlarged on post arrest bail, vide order dated 15.11.2019 while two other co-accused Abdul Muneem and Nadeem have been granted pre-arrest bail, which was confirmed vide order dated 20.11.2019. It is also argued that the applicant/accused is cardiac patient, his continuous detention without any legal reason is affecting badly his health as well as his service record. He lastly prayed that the applicant/accused is entitled for concession of bail.

5. Learned A.P.G. for the State has opposed the bail application. Whereas learned counsel for the complainant submits that applicant/accused has contacted the complainant and by showing his medical condition has obtained the sympathy of the complainant and as such, he has no objection in the event if this court granted bail to the applicant.

6. The record shows that the applicant/accused is not previous convict nor a hardened criminal. Moreover, the Applicant has been in continuous custody since his arrest and is no more required for the purpose of any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping the applicant/accused behind the bars for an indefinite period pending determination of his guilt, which would amount to punish without trial. Even otherwise, fair and speedy trial is one of the fundamental rights of applicant.

7. Therefore, in view the peculiar facts and circumstances of the case specially 'No Objection' given by the complainant, I am of the opinion that prima facie, applicant/accused has succeeded to bring his case for grant of post arrest bail within the purview of subsection (2) of section 497, Cr.P.C., and for this reason, he was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of

Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial Court, by my short order dated 06.4.2021.

8. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

Above are the reasons of my short order dated 06.04.2021.

JUDGE

*Jamil***