

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 859 of 2021

Abdul Ghaffar v. The State

Applicant: Through M/s. Khawaja Shams-ul-Islam & Shahzad Mehmood, Advocates.

The State: Through Mr. Muhammad Nadeem Khan, Assistant Attorney General a/w Complainant / Inspector M. Rashid Bhatti, FIA, ACC and IO /Sub - Inspector Habib-ur-Rehman, FIA, Anti-Corruption Circle, Karachi.

Date of Hg. 28.05.2021

Date of Order. 28.05.2021

ARSHAD HUSSAIN KHAN-J. The applicant / accused namely, Abdul Ghaffar son of [late] Muhammad Sharif, through above bail application has sought post-arrest bail in the case bearing F.I.R. No.08/2021 registered under Sections 3&4 Anti-Money Laundering Act, 2010, Amended Sep-2020, PS FIA, Anti-Corruption Circle, Karachi.

2. Briefly, the facts of the case as narrated in the FIR are that Enquiry No.04/2021 dated 20.03.2021 was registered at FIA Anti-Corruption Circle Karachi u/s 161/165/165A/109 PPC r/w section 5(2) PCA-II, 1947, (predicate offences as Specified in Schedule-1 of AML Act 2010) wherein interim Charge Sheet No. 12/2021 dated 06.04.2021 was submitted against 06 accused persons including the present applicant/accused Abdul Ghaffar and report received from investigation officers of predicate offence. During investigation of predicate offences, it transpired that the applicant/accused, Deputy Director Forensic Expert, during his posting as Incharge Cyber Crime Reporting Center (CCRC) Karachi extended undue favour in Enquiry No.560/2020 to M/s. ABTACH (Pvt.) Ltd. against bribe. It has been stated that an amount of Rs.14 million given as illegal gratification is ascertained out of which Rs.04 Million was transferred/handed over at Lahore to Najma Hafeez on 25.01.2021 through contact person of P.W.

Amin S/o Abdul Sattar. The same is corroborated by subsequent cash deposit of Rs.1 million in bank account bearing number 1025-79001305-03 with title Najma Hafeez deposited by herself at ITBL - Fortress Branch Lahore on 26.01.2021. Besides, Rs.10 million was transferred through contact person of PW Amin to one Asim Mansoor on 28.01.202] at Lahore upon directions of accused Abdul Ghaffar. Disposal/transfer/conversion of proceeds of crime of Rs.14 million to some other persons is to be ascertained during investigation and upon successful trace, codal formalities for attachment will be commenced as per law. Such fact established that accused Abdul Ghaffar in the capacity of public servant by misusing his position, acquired the crime proceeds obtained from commission of predicate offences is involved in money laundering as defined in section 2(xxxi) of AML Act 2010, thus committed offence of Money Laundering under section 3 of Anti-Money Laundering Act, 2010, punishable under section 4 of AML Act, 2010, Amended Sep-2020 [The Act].

3. It is, inter alia, contended by learned counsel for the applicant/accused that the applicant is innocent and has falsely been implicated in the case. He has further contended that applicant, a committed official of FIA, has demonstrated unparalleled commitment in his role as Incharge Cyber Crime Karachi and has shown exemplary performance during this period, overseeing the inquiry and investigation of thousands of cybercrime cases and played pivotal role in providing justice to the victims and complainants who approached the FIA Cyber Crime Circle Karachi. He has further contended that the applicant is being penalized for no fault of him but as an upright officer, he initiated an inquiry which was culminated into FIR, the said action annoyed the powerful mafia having deep connection with the men at the helm of affairs. Learned counsel further contended that the FIA initiated enquiries against 05 international scammers companies viz. AB TACH, Legendesk, Grakos, Salsoft and Digitonics, which are allegedly involved in harassment, fraudulent activities, identity theft, impersonating, cheating, extortion etc. tarnishing the image of Pakistan. It is also contended that the aforesaid enquiries were marked as confidential and were conducted under strong supervision of applicant/accused. He has further contended that during enquiry

proceedings against the aforesaid companies, the applicant was pressurized by the mafia of FIA HQs to extend undue favors to all 05 alleged companies and the enquiries should be closed at any cost. However, when the applicant categorically refused to accede such demand, initially they transferred the enquires from the applicant and subsequently, a false FIR No.04 of 2021 was registered at FIA Anti-Corruption Circle Karachi u/s 161/165/165A/109 PPC r/w section 5(2) PCA-II, 1947, (predicate offences as Specified in Schedule-1 of AML Act 2010), inter alia, against the present applicant/accused. Consequently, the applicant surrendered before this Court and obtained ad-interim bail before arrest on 05.4.2021, thereafter the applicant regularly appeared before the prosecution agency, however, in order to take revenge from the applicant/accused, the applicant got illegally arrested on 26.4.2021, while he was recording his statement in crime No. 04 of 2021, by producing FIR No.08/2021 [The FIR]. Per learned counsel the FIR as well as interim challan is nothing but a reproduction of the earlier FIR No.04/2021, which was under different provisions of law such there is no nexus with the predicate offence. Learned counsel further contended that learned trial court while declining the post-arrest bail to the applicant has failed to take into consideration the violation of the provisions of the Act committed by the complainant while lodging the FIR. He has further argued that admittedly in the present case the FIR has been lodged by the Sub-Inspector, who has no authority to proceed as well as the Investigating Officer is also of an Inspector level. It is also urged that in terms of the Act there should be an official notification duly issued by the Government of Pakistan in terms of the law laid down in the case of Mustafa Impex v. Government of Pakistan [PLD 2016 SC 808] whereby in terms of Article 90 of the Constitution the Cabinet should approve, whereas, in the present case, there is no notification in terms of the Act as well as the regulation made therein, which authorized the prosecution agency to lodge FIR against the applicant. Further contended that the entire proceedings pending before the Special Judge (Central-1) is coram non-judice. It is also argued that there are contradictions in the contents of the FIR and statement of PWs recorded under section 161 Cr.P.C. Learned counsel further contended that the evidence has already been collected, and investigation has been completed and as such the applicant is no more

required for further investigation. It is also contended that the applicant is behind the bar since his arrest as such no useful purpose would be served to confine the Applicant in Jail. It is also argued that admittedly no bank statement of Azneem Bilwani has been placed on the record from whom alleged bribe has been received by the applicant. It is also argued that maximum punishment of the offence under the Act is 10 years, whereas in predicate offence in FIR No.04/2021, the maximum punishment is 03 years. The allegations against the Applicant are nothing but based on dishonesty and malafide and even from the contents of the FIR no case for criminal prosecution is made out against the Applicant. The registration of FIR is patently illegal, void ab-initio. The second FIR is also violative of Section 234, 235 and 236 of the Cr.P.C., which prohibit lodging of the second FIR. Lastly, he has prayed that the applicant/accused may be admitted to bail. Learned counsel in support of his arguments has relied upon the cases of Rafi Ullah vs. The State and another (2019 P.Cr.L.J 1608), Misbah Karim and others vs. Federation of Pakistan through Secretary and others (PLD 2016 Sindh 462), Irfan vs. The State (2016 P. Cr.L.J. 581), Shoaib Ahmed Shaikh and 2 others vs. Federation of Pakistan through Secretary and others (PLD 2016 Sindh 607), Muhammad Ehsan vs. The State (FIA) (2017 P.Cr.L.J. 1250), Slackness in the Progress of Pending Enquiries Relating to Fake Bank Accounts, etc. In the matter of Human Rights Case No.39216-G of 2018, decided on 5th September, 2018 (2018 SCMR 1851), Muhammad Alam vs. The State (2018 P.Cr.L.J. 837), Anwar Khan and another vs. The State (2018 YLR 172), Slackness in the Progress of Pending Enquiries Relating to Fake Bank Accounts, etc. In the matter of Human Rights Case No.39216-G of 2018, decided on 7th January, 2019 (2019 SCMR 332), Habeeb Ullah vs. The State (2015 YLR 894), Muhammad Ullah and another vs. The State and another (2015 YLR 2403), Zaheer Ullah vs. The State (2015 P.Cr.L.J. 1048), Yaqoob Khan and another vs. The State (2015 P. Cr.L.J. 1538), Azmat Ullah vs. The State (2016 YLR 361), Muhammad Usman vs. The State (2016 P.Cr.L.J. 54), Mir Jan vs. The State (2003 P.Cr.L.J. 1903) and Sheraz vs. The State (2017 P.Cr. L.J. 561).

4. Learned Assistant Attorney General for Pakistan while supporting the order of learned trial court vehemently opposed the bail application and has argued that the applicant/accused is involved in the heinous crime of money laundering as he has assigned specific role in the commission of offence and the material collected against him connects him to the alleged offence, hence he is not entitled for concession of bail. He has further argued the applicant is also involved in the case of similar nature. It is also argued that since the offence under Sections 3 & 4 of the Act is cognizable and non-bailable and punishable upto 10 years as such the same falls within the prohibitory clause of Section 497 Cr.P.C. It is also argued that in the event if the applicant/accused is granted bail, at this stage, there is apprehension that he might use his influence to tamper the prosecution evidence.

5. I have heard the arguments of learned counsel appearing on behalf of the applicant/accused, learned Assistant Attorney General for Pakistan and perused the material available on the record as well as case-law cited by the learned counsel for the applicant/accused.

6. From perusal of the FIR, it appears that initially an FIR No.04/2021 dated 20.03.2021 was registered at FIA Anti-Corruption Circle Karachi u/s 161/165/165A/109 PPC r/w section 5(2) PCA-II, 1947, (predicate offences as Specified in Schedule-1 of AML Act 2010) against 06 accused persons including the present applicant/accused. During investigation of predicate offences, it transpired that the applicant/accused, Deputy Director Forensic Expert, during his posting as Incharge Cyber Crime Reporting Center (CCRC) Karachi extended undue favour in Enquiry No.560/2020 to M/s. ABTACH (Pvt.) Ltd. against illegal gratification/bribe. And further the amount so received towards illegal gratification/bribe was transferred/handed over to one Najma Hafeez (Ex-wife) and one Asim Mansoor (brother in law). However, all these allegations would be decided during trial after recording evidence. As, at this stage any observation and/or discussion either on the respective contentions of learned counsels for the parties or the material available on the record might prejudice the case of either side on merits. Even otherwise, it is settled principle of law that truth or otherwise of the charges could only be determined at the conclusion of the trial after taking into

consideration the evidence adduced by both the parties. Reliance in this regard can be placed on the case of *Muhammad Nadeem Anwar and another v. National Accountability* [2008 SC 645].

7. As regards the contention of learned Assistant Attorney General that the offence under the Act is non-bailable and punishable upto 10 years as such the same falls within the prohibitory clause of Section 497 Cr.P.C., Section 3 of the Act prescribes the offence of money laundering, while Section 4 provides the punishment for commission of such offence, which reads as under:-

4. Punishment for money laundering.— (1) Whoever commits the offence of money laundering shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend up to ten years and shall also be liable to fine which may extend up to twenty-five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

(2) The fine under sub-section (1) may extend up to one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).

[emphasis supplied]

The aforesaid Section provides the punishment for a term, which may extend to ten years, the word “may” is used in the provision, which provides discretion to the courts for punishing the accused found guilty after complete trial. It is settled by now that while deciding a bail application the lesser punishment provided in the law is to be considered. In this regard, reliance can be placed on the case of *Jamal-ud-Din alias Zubair Khan v. The State* [2012 SCMR 573] wherein the Honourable Supreme Court of Pakistan, inter alia, has held that:-

"4.Needless to say that the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."

8. Insofar as the contention of learned Assistant Attorney General that the applicant/accused is involved in another criminal case is concerned, learned counsel for the applicant/accused submits that firstly, he has been falsely implicated and secondly, in the said case he has already been granted bail. He has further urged that the said case is still pending and he has not been convicted.

The Honourable Supreme Court of Pakistan in case of *Jamal Uddin* [supra] has also held as follows:-

“5. The argument that the petitioner has been involved in two other cases of similar nature would not come in the way of grant of petition so long as there is nothing on the record to show that he has been convicted in any one of them.”

9. Besides above, it is also well settled law that mere pendency of criminal cases against any of the accused does not ipso-facto disentitle him for grant of bail. Reliance in this regard has been placed on the case of *Tarique and 3 others v. The State* [2018 MLD 745].

10. The record shows that the applicant/accused is not previous convict nor a hardened criminal and has been in continuous custody since his arrest and is no more required for any investigation. Furthermore, record also reflects that only interim challan has been submitted and as such conclusion of trial is not in sight. Besides, in the present case, it appears that the entire case is based upon documentary evidence, which too is already with the Prosecution as such in the event the applicant/accused is released on bail no chance of tampering with evidence will arise. Moreover, in the earlier FIR No.4 of 2021 in respect of the predicate offence, the applicant has already been granted bail. It is also well settled law that bail cannot be withheld as punishment.

11. In view of the peculiar facts and circumstances of the case, as well as the dictum laid down by the Honourable Supreme Court of Pakistan, I do not find any justification to keep the applicant / accused behind the bars for an indefinite period pending determination of his guilt. Hence, I am of the opinion that he is entitled to bail and for this reason, he was admitted to bail subject to his furnishing solvent surety

in the sum of Rs.5,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court by my short order dated 28.5.2021.

12. 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 his bail without making any reference to this Court.

Above are the reasons of my short order dated 28.05.2021.

JUDGE

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