

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SPL. CR. MISC. APPLICATION NO.283/2014

Applicant : The Deputy Director,
Directorate of Intelligence & Investigation-IR.

Respondent : Sajid Hussain.

APPEARANCE

Syed Mohsin Imam Rizvi advocate for Applicant.

Mr. Arshad Lodhi advocate for respondent.

Date of hearing : 29th February 2016.

Date of order : 10.03.2016.

ORDER

Through instant application, the present applicant seeks cancellation of bail, granted to the respondent / accused Sajid Hussain by Special Court vide its order dated 02.07.2014 whereby releasing him in Crime No.01/2014 registered by Directorate of Intelligence and Investigation - Inland Revenue, Karachi for offence u/s 3, 6, 7, 8, 21, 22, 23, 26 and 73 of the Sales Tax Act 1990 punishable under section 33(3), (5), (8)(11c)(13)(16)(18) of Sales Tax Act, 1990.

2. The relevant facts, leading to instant application, are that respondent / accused was arrested in the said case crime which was lodged

by the present applicant / complainant wherein it was alleged that complaint was received to Directorate of Intelligence & Investigation - Inland Revenue, Karachi against M/s. Tripick Trading International, Karachi that it (said unit/ firm) managed to get it registered under sales tax despite earlier rejection of its application for such purpose. As soon as it got its registration it illegal business of issuing fake/bogus sales tax invoices. Physical verification, *conducted by the Directorate*, revealed that no such firm exists at the declared registered premises and the tenancy agreement, furnished by the proprietor of the said firm to the department at time of registration, was also found fake. On physical verification it was further confirmed that the aforesaid firm is conducting its illegal business through Sajid Hussain under the garb of tax consultancy at some other office situated in the same Plaza at Karachi. In pursuance of the aforesaid complaint and after due scrutiny of available record the Directorate visited the office and found illegal activity of issuance of fake sales tax returns at the said office by a person namely Sajid Hussain (*respondent /accused*) under the garb of tax consultancy; who in his initial interview with the team admitted that he is doing the aforesaid illegal activity. The record recovered from the said office included a CPU, computerized data of fake invoices, sales tax returns of said firms, stamps of various firms ID password and pin codes of other registered persons including fake units, cheque books and other manual record which substantiated that whole scam was carried out from the said premises by the above named person Sajid Hussain(*respondent / accused*) which caused an estimated loss to national exchequer of Rs.160 million.

3. Learned counsel for applicant *inter alia* contended that the respondent was found in his office working as tax consultant and record of

various companies including Tripick Trading International was recovered from there; sufficient evidence was available with the prosecution against the respondent; he is the real culprit who caused loss of revenue of Rs.160 million to public exchequer; all judgments relied upon by trial Court are on distinguishable facts and circumstances; impugned order of the trial Court is shocking, perverse, ab-initio void and not maintainable in the eyes of law.

4. In contra, learned counsel for respondent contended that respondent was acting as Sales Tax Consultant acting on direction of his clients; nothing recovered from his possession, no notice for enquiry served, nothing gained by him, entire case is based on documentary evidence already collected and in custody of applicant, as concerned RTO has exonerated the respondent and did not take any action against him as such this is waiver on part of applicant which cannot be re-agitated; that first prosecution has to approach trial Court for cancellation of bail in terms of section 37(b) of Sales Tax Act 1990; present application is incompetent and liable to be dismissed. Learned counsel relied upon 1971 SCMR 637, 1976 PCrLJ 324, 1990 PCrLJ 340 and 2012 PCrLJ 1722.

5. I have heard the respective sides so also have gone through the available material carefully.

6. Before proceeding further, it would be relevant to refer operative part of the order of the lower court which is:

‘I have given my anxious..... In my view it is premature stage as the allegations of issuing fake sales tax invoices and filing of fake sales tax returns under the garb of tax consultancy on the part of the applicant is yet

to be determined after recording evidence of prosecution witnesses during trial. It also appears that the entire case of prosecution is based on documentary evidence which has almost been collected by the prosecution. There is also no allegation against the applicant for tampering the prosecution witnesses or misusing the concession of bail if granted. Interim challan has been submitted in the case. The applicant is behind the bar since his arrest. The applicant has no previous criminal history. In such circumstances the case of applicant clearly falls within the ambit of further enquiry'.

(Emphases supplied)

It is pertinent to mention that said grounds do not qualify the term '*further inquiry*' because these grounds shall be available to almost every accused in such like case(s). Submission of challan; accused to be in custody; his being *first offender* and prosecution, based on documentary evidence, shall be available *almost* in every case of such like nature hence if this criterion is set to release an accused on bail it would result in making the term '*further inquiry*' redundant for all its purposes. Further inquiry does not mean hypothesis but it means that a tentative assessment of the available material should result in forming an opinion that there are no reasonable grounds to believe that accused *prima facie* has not committed the offence with which he is charged. Reference in this regard can well be made to a case, reported as 2011 SCMR 710 (Nasir Khan vs. Waseel Gul and another).

7. From perusal of the record, including order of Special Court, it appears that the learned Special Court *at no material times* tried to keep the distinction between an offence, *effecting an individual* and the one (*offence*) directed against the society as a whole. The *white collar* crimes do fall within second category where discretion of bail *normally* be not exercised in favour of the accused and mere *non-falling* of offence within prohibitory clause of

Section 497(i) Cr.PC *normally* becomes immaterial in such like cases. A reference in this regard can well be made to the case of Imtiaz Ahmed v State (PLD1997 SC 545) wherein it is observed that:

'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 circumstances 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 sentence 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.**

(Emphasis supplied)

The allegation against the respondent / accused was not of cheating or defrauding an *individual* but causing loss of hundreds of millions of rupees to *government exchequer* hence *prima facie* the case of the respondent / accused falls in *exceptional circumstances* where the bail could only be granted when within opinion of the Court the **collected material, available on record, prima facie is not sufficient to connect the accused with commission of the offence, involved** because this brings a case within meaning of Section 497(ii) Cr.PC where release of the accused becomes a matter of *right*. Reference is made to the case of Nisar Ahmed v. State &Ors (2014 SCMR 27) wherein such view was affirmed while referring to known case of Muhammad Ismail v. Muhammad Rafique (PLD 1989 SC 585) that:

'The question then arises; whether, subsection (2) of section 497 Cr.PC would have operation notwithstanding the afore-stated practice of this Court. Much discussion is not necessary in this behalf. When an accused person becomes entitled as of right to bail under subsection (2) of section 497, Cr.PC the same cannot be withheld on the ground of practice; because, the latter is relatable to exercise of discretion while the former is relatable to the exercise and grant of right.'

Thus, it was obligatory upon the respondent / accused to show existence of *prima facie* material that he is not linked with the offence even if material, *collected* by prosecution, is tentatively taken as correct which the bail grant order fails to reflect. On the other hand, the material, *collected by prosecution*, *prima facie* establish that it is the respondent/accused who not only succeeded in managing *firm/unit* registered; was involved in issuing fake/bogus sales tax invoices; on physical verification no such firm was found existing at its declared place but at some other place; it was the respondent/accused who was running/managing such office (firm) under garb of tax consultancy and the respondent/accused does not deny running of such office (firm) with a plea that he (respondent/accused) was acting under instruction of his clients. Let me insist that one shall not be entitled for an exception to an illegal act merely for reason that he acted on instruction of others, including that of client. Thus, in my view these were/are *prima facie* sufficient material to believe that the respondent/accused was linked with the offence with which he is charged. The charged offence is one of causing a loss of hundreds of millions of rupees to *government exchequer* therefore, it was never an ordinary offence.

8. In view of the discussion, *made herein above*, I am of the clear view that this was not such a case that respondent Sajid Hussain ought to have been granted bail. Reference can be made to the the case of Muhammad

Yousuf v. PC Abdul Lateef Shar (2012 SCMR 1945) wherein the Honourable Supreme Court cancelled the bail while observing that:

“8. We are cognizance of the law that once the high court has exercised his discretion of granting bail to the respondent No.1, there has to be very special and overwhelming circumstances to cancel the bail. In the case of Naseem Malik v. The State (2004 SCMR 823), this Court has cancelled the bail on *inter alia* , the ground that the accused was specifically named and comprehensively described in the F.I.R as one of the conspirator and perpetrator of the crime and it was noted that the statement of co-accused implicating the accused can validly be taken into consideration while deciding such matter. As discussed above there is an apparent connection of the respondent No.1 in the commission of alleged crime in this case and there is sufficient material to connect him with the same. The High Court apparently misread the record in this regard in granting of bail to the respondent No.1. We, therefore, do not consider this case was such that respondent No.1 ought to have been granted bail.”

Accordingly, impugned order dated 02.07.2014 being perverse and illegal is set aside. The bail granted to the respondent/accused by the Special Court is *hereby* cancelled. The respondent/accused shall surrender before the trial Court which shall conclude the trial of the case *preferably* within a period of three months.

Imran/PA

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