

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **CR. BAIL APPLICATION NO.107/2022**

Applicant : Mansoor Ahmed Khan  
Respondent : The state.

### **CR. BAIL APPLICATION NO.576/2022**

Applicant : Ahmed Faraz  
Respondent : The state.

#### **Appearance:**

Mr. Shaukat Ali Shehroze advocate for applicant Mansoor Ahmed Khan.

Mr. M. Yahya Iqbal advocate for applicant Ahmed Faraz.

Mr. Muhammad Nadeem Khan, Assistant Attorney General.

Date of hearing and short order: 23.04.2022

### **ORDER**

**SALAHUDDIN PANHWAR, J.** Relevant facts of prosecution case as disclosed in FIR No.22/2020, under sections 420, 468, 471, 109, 34 PPC read with Section 5(2) of PCA, 1947, registered at P.S FIA, Corporate Crime Circle, Karachi; are that on complaint of Sikandar Masood, Deputy Secretary (Admin), Ministry of Industries & Production, Islamabad, an enquiry was conducted, wherein it transpired that accused being employees of Utility Stores Corporation (U.S.C) alongwith their accomplices caused colossal loss to the national exchequer and embezzled Rs.118.704 Million. According to prosecution, accused Syed Danish transferred funds to the tune of Rs.318,000/- in the account of accused Muneer Ahmed Khan ex-Warehouse Incharge Commodities/

Sugar USC, South Region, Karachi, being maintained by him at UBL Korangi, Karachi. It is further case of the prosecution that accused Muneer Ahmed Khan provided stock without Government contract vehicle for embezzlement to the tune of Rs.1,100,140/- totaling Rs.1,418,140/-. Accused Syed Danish transferred USC's embezzled funds in the bank account of applicant/accused Mansoor Ahmed Khan Ex-warehouse Incharge Branded USC, South Region, Karachi, to the tune of Rs.1,512,374/-; that applicant/accused Mansoor Ahmed Khan provided stock without Government contract vehicle for embezzlement to the tune of Rs.5,008,974/-, that accused Zulfiqar Soomro, Junior Accounts Assistant USC, South Region, Karachi, entered less amount in the Store Inventory Control Ledger in connivance with accused Syed Danish Ali, Ex-store Incharge USC Pakistan Secretariat, thus embezzled Rs.1,322,946/-; that applicant/accused Ahmed Faraz illegally mentioned Rs.20,00,000/- less opening balance in the Store Inventory Control Ledger in order to cover the embezzled amount.

2. By order dated 22.04.2022 post-arrest bail of applicants Mansoor Ahmed Khan, Munir Ahmed Khan, and Zulfiqar Ali Soomro was dismissed on merits by this Court, thereafter applicants approached apex court, however they failed to succeed their case and bail application was declined by order dated 06.09.2021 with direction to the trial court to conclude the trial preferably within a period of six months.

3. Learned counsel for applicants insist captioned bail applications on statutory ground with plea that maximum punishment as provided is seven years and statutory period is one year; that applicants are behind the bars since 17 months without

remission hence they are entitled to the relief of bail on statutory ground.

4. Since present bail applications are on statutory ground therefore report was called from the Trial Court. Trial Court has submitted report contending therein that out of 20 witnesses cited in the calendar of witnesses, 6 witnesses have been examined whereas 1 witness was given up by the prosecution, but trial court is vacant since 06.12.2021 and PWs are not attending on any date of hearing.

5. Admittedly applicants have completed their statutory period for bail. Besides, Trial Court is vacant; 13 witnesses are yet to be examined which reflects that there is no chance of decision of the case in near future, hence no one can be detained in prison for indefinite period. Case is yet pending for trial. The learned Assistant Attorney General has not taken plea that applicants would misuse the concession of bail or there is a chance of tempering with the record. It is matter of record that the applicants are charged with offences punishable under sections 420, 468, 471, 109, 34 PPC read with Section 5(2) of PCA, 1947, which are not punishable with death; their bail plea is, therefore, covered by part (a) of the third proviso to section 497(1) Cr.P.C. The above provision envisages that in an offence not punishable with death, the trial of the accused is to be concluded within a period of one year from the date of detention of the accused, and in case the trial is not so concluded, the law mandates the release of the accused on bail. The accused, thus, has a statutory right to be released on bail if his trial for such offence is not concluded within a period of one year from the date of his detention. The period of one year for the conclusion of the trial begins from the date of the arrest/detention of the accused

and it is of little importance as to when the charge is framed and the trial commenced. The purpose and objective of the provision is to ensure that the trial of an accused is conducted expeditiously and the pre-conviction detention of an accused does not extend beyond the period of one year, in cases involving offences not punishable with death. In such cases, if the trial of an accused is not concluded within a year of his detention, the statutory right to be released on bail ripens in his favour.

6. In Case of ***Shakil Shah v. The State and others (2022 SCMR 01)***, it has been held by the Apex Court that *“This statutory right to be released on bail was, however, subject to two exceptions: one is embodied in the third proviso itself and the second was provided in the fourth proviso to section 497 Cr.P.C. As per these exceptions, the right to be released on bail on the ground of delay in conclusion of the trial is not available to an accused if: (i) the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf, or (ii) the accused was a convicted offender for an offence punishable with death or imprisonment for life or was in the opinion of the court a hardened, desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life.”*

7. In these circumstances, the Applicants have made out a case for their release on bail on statutory ground i.e. non-conclusion of trial within the period specified in part (a) of third proviso to section 497(1) of the Code of Criminal Procedure 1898, as from the circumstances of the case, they cannot be solely held responsible for delay in the conclusion of trial, nor they are hardened,

desperate or dangerous criminals; nor accused of terrorism and have no record of previous conviction. Hence, by short order dated 23.04.2022 applicants were admitted to post arrest bail. These are the reasons for the short order.

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