

ORDER SHEET
**THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Bail Application No.S-510 of 2022.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.
For hearing of main case.

29.04.2022.

Mr. Khawaja Shams-ul-Islam advocate for the applicant.
Mr. Nazar Muhammad Memon, Additional Prosecutor General.
Mr. Shahid Ahmed Shaikh Additional Prosecutor General.
AD Asad Ali I.O. of the case and ASI Meer Alam ACE Hyderabad.

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ZULFIQAR AHMED KHAN, J: Through instant application, applicant/accused Shahzad Riaz seeks post arrest bail in Crime No.01 of 2022, under Sections 409, 420, 467, 468, 471, 34 PPC read with Section 5(2) Prevention of Corruption Act-II 1947, registered at P.S. ACE Hyderabad.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence needs not to reproduce the same hereunder.

3. I have heard learned counsel for the applicant as well as Mr. Shahid Ahmed Shaikh, Additional Prosecutor General Sindh.

4. Learned counsel for the applicant states that it is evident from the instant FIR, incident is of the year 2012-2013 whereas FIR has only been filed on 04.01.2022 i.e. after delay of more than a decade for which no justification has been presented to this Court. FIR also refers to an inquiry report dated 10.12.2021 conducted by Circle Officer ACE Matiari Irfan Ali Arbab, which also became subject matter of the earlier FIR and serious reservations against said individual were given by this Court at the Principal seat in C.P. No.D-5521/2021 vide orders dated 07.03.2022, 16.03.2022 and 30.03.2022 (Pages 443 to 457), who was directed to be transferred from his post. Counsel submits that on the same facts previously two FIRs were registered bearing No.29/2017, No.01/2018 in which

only yesterday a Challan has been filed. He further submits that strangely the respondents have also filed a Civil Suit No.1570/2017 (page 637) at the Principal Seat of this Court seeking recovery of the same amounts, on the basis of which Criminal Petition No.56-K of 2018 as filed before the Honorable Supreme Court was dismissed as not pressed by the present respondent on the basis that a Civil Suit was pending between the parties. Counsel contends that this is a serious case of highhandedness of government officials who have chosen to arrest present private person while other individuals who are government officers have been spared. The I.O. has shown to the Court that he is making hectic efforts towards the same. Learned counsel states that at the touch stone of Section 5(2) of Prevention of Corruption Act-II 1947 which in clear terms require investigation and arrest not to be commenced unless an order of the Magistrate has been passed or warrant of arrest has been issued, which ingredients are missing in the case at hand making the entire episode illegal and void ab initio, to which the learned APG states that the said provision of law does not apply to a private person, but when he was directed to satisfy that the said provision only pertained to government officers and not private persons, he referred to certain orders which however appear to have not been issued by the concerned Magistrate but only by high-ups of Anti-Corruption Department.

5. Learned Additional P.G. has strongly opposed the grant of bail but time and again could not convince this Court on the assertions made by the learned counsel for the applicant.

6. Prima facie the applicant has made out a case of double jeopardy as well as of highhandedness of the respondents and discriminatory treatment meted out towards the applicant. Malafides are entrenched in every word of the FIR as alleged. In view of what has been penned down above, this bail application is allowed. The applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.2 Million (Rs.2,000,000 only) and P.R Bond in the like amount to the satisfaction of learned Additional Registrar of this Court.

7. Respondents are warned to act in accordance with law and not to attack civil liberty of the applicant on false and frivolous pretexts when the subject matter is already pending before a Civil Court and refrain from forum shopping as per the dictum laid down by the Hon'ble Supreme Court in the cases of *Bashir*

Ahmed versus Additional Sessions Judge, Faisalabad and 4 others (PLD 2010 SC 661) and Zuhair Abbas Taheem versus The State and others (2017 SCMR 77).

8. Nonetheless these observations are tentative and the learned trial Court to decide the case without being prejudiced hereunto.

J U D G E

Irfan Ali