ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI Crl. Bail Application No. 2049 of 2020

Date Order with signature of Judge

- 1. For orders on M.A. No. 12870 of 2020.
- 2. For hearing of bail application.

10th February 2021.

Mr. Muhammad Daud Narejo, advocate for applicants/accused.

Mr. Shahid Khan, Special Prosecutor Pak. Railway.

Heard learned counsel for the respective parties.

Admittedly, sentence is not falling within the prohibitory clause. Learned counsel for the applicants/accused has placed on record order dated 17.12.2020 passed by learned Judicial Magistrate-XIIIth, Karachi South in Crl. Bail Application No. 78 of 2020 whereby co-accused Aijaz Ali has been granted bail, hence, he is seeking bail on the rule of consistency as well.

In contra, learned Special Prosecutor Pak. Railway contends that post arrest bail cannot be considered while deciding pre-arrest bail.

Since no purpose would be served if instant pre-arrest bail is dismissed and applicants are remanded to the custody to move the application for bail after arrest. Besides, in view of *Tariq Bashir v. State* (PLD 1995 Supreme Court 34) it is settled proposition that if case is not falling within prohibitory clause, grant of bail is a rule and its refusal is an exception. bail in the offences which are not falling within the prohibitory clause is a right unless it is *prima facie* shows that there is apprehension that the applicant would repeat the offence, will abscond or will tamper with the prosecution evidence; all three *exceptions* are not taken by the prosecution. Accordingly, applicant is admitted on bail in the sum of Rs.100,000/- with P.R. bonds in the like amount to the satisfaction of the trial Court.

4. Needless to mention that the above observations are purely tentative in nature and would not prejudice to the merits of caseAccordingly,

interim pre-arrest bail granted to the applicants/accused is confirmed on the same terms and conditions. In case applicants/accused will repeat the offence, complainant would be competent to move application before the trial court for cancellation of bail. Office shall send duplicate part of surety papers to the trial Court.

JUDGE

Sajid