

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

Criminal Bail Application 1602 of 2022

Abdul Khalique Solangi
vs.
The State

For the Applicant / Accused : Mr. Abdul Majeed Khoso,
Advocate

For the Prosecution / State : Dr. Raja Muhammad Ali
Special Prosecutor NAB

Mr. Adnan Hafiz Abbasi
I.O. NAB

Date of hearing : 03.10.2022

Date of announcement : 03.10.2022

ORDER

Agha Faisal, J. This matter pertains to embezzlement of pension funds from the Accounts Office Hyderabad, stated to have caused a loss to the public exchequer to the tune of Rs. 3.2 Billion, in respect whereof Reference No.04 of 2022 under the National Accountability Ordinance, 1999, is pending before the Accountability Court No. IV Sindh at Karachi.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the learned Accountability Court No. IV Sindh at Karachi, in Bail Application 02 of 2022, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

- a. The allegation levelled against the applicant *inter alia* was that he was involved in accepting bribes, bribing officers for release of pension funds and distributing the ill-gotten gains to higher officers. Reliance was placed by the prosecution upon contents of messages in his mobile phone demonstrating his role in the criminal activity. Reference was also made to substantial undisclosed immovable assets accumulated by the applicant through the proceeds of his alleged crime.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that the applicant had never served in the *budget* department; no proper assessment of the data on his phone was made to substantiate his role in the crime and even otherwise the purported messages are shown to have been exchanged with a retired employee; and finally that he had been wrongfully accused. Reliance was placed upon authority pertaining to weightage apportioned to electronic evidence in instances of white collar crime.
- c. The Prosecution asserted that the applicant was not eligible for the relief sought *inter alia* as it was *prima facie* apparent from the record that he had been posted in the Treasury section since 2008 and remained there till 2018, save for a brief month long interlude when he was transferred out. It was shown that post 2018 the applicant had been in the I.T section, however, it is the said office that has since been tasked with the final disbursement of pensions.

It was submitted that the alleged exchange of electronic messages, adverted to from the record, shows that the relevant code numbers, A04101 and A04117, corresponded to heads of pension. It was shown that the code numbers and amounts showed the quantum that was misappropriated per respective head.

Our attention was drawn to contents of the Investigation report showing that budget estimates were consistently inflated with inclusion of fictional amounts and the beneficiaries *on paper* included many youngsters, some as young as 15 years of age when the disbursement started thereto. It was averred that many stated beneficiaries were shown to have retired more than once.

Finally, the applicant's declaration of assets made in his application for bail before the learned Trial Court was shown in juxtaposition to the

said declaration made in the memorandum of application herein, and it was shown that now the applicant had admitted ownership of the immovable property alleged by NAB to have been owned by him; whereas, earlier the factum had been actively concealed in the relevant memorandum of application for bail filed before the trial court.

- d. The record showing the postings of the applicant does not, at first glance, demonstrate any disassociation of the applicant with the treasury. While the evidential value and weightage of the electronic record of messages shall be determined by the trial court, no case has been set forth before us to outright discard the said record / evidence. *Admittedly*, the memorandum of application for bail filed by the applicant before the trial court dated 27.06.2022 expressly states that “*The applicant have only one house in Kachi Abadi measuring 120 Sq Yards purchased 20 years ago...*”; whereas, in the memorandum of application for bail filed herein dated 15.08.2022 numerous additional properties have been mentioned. No cogent rationale for this *prima facie* discrepancy has been articulated before us.

4. A tentative³ assessment of the material⁴ placed before the court demonstrates the existence of some tangible evidence, which, if left un rebutted, may lead to the inference of guilt⁵ and reasonable grounds have been shown linking the applicant with the cited offence/s⁶, punishable with imprisonment of ten years or more, in respect whereof the law⁷ disapproves of the concession of bail.

5. It is also gleaned that the Prosecution has expressed cogent reasons indicating⁸ the applicant’s involvement in the alleged offence/s and the arguments articulated by the applicant’s counsel did not qualify the present facts and circumstances to fall within the ambit of further inquiry⁹.

6. The reliance of the applicant’s counsel upon precedent is unmerited as it is settled law that the determination of each bail matter has to be predicated upon its own distinctive facts and the Court was required to

³ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁴ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁵ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

⁶ *Muhammad Imran vs. The State* reported as 2016 SCMR 1401.

⁷ *Section 497(1) Code of Criminal Procedure 1898; Sohail Waqar vs. The State* reported as 2017 SCMR 325.

⁸ *Rehman Ullah vs. The State* reported as 2020 SCMR 357; *Ravida vs. Amjad & Others* reported as 2018 SCMR 28; *Haji Shahid Hussain & Others vs. The State* reported as 2017 SCMR 616.

⁹ As enumerated per *Section 497(2) Code of Criminal Procedure 1898; Muhammad Faiz vs. The State* reported as 2015 SCMR 655.

ascertain whether, in the distinct circumstances, a fit case for bail was made out¹⁰.

7. In view hereof, it is the assessment of this Court that the learned counsel for the applicant has been unable to set forth a fit case for grant of post-arrest bail, hence, the present application was dismissed vide short order announced at the conclusion of the hearing in Court earlier today. These are the reasons for the short order. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

JUDGE

¹⁰ *Muhammad Faiz alias Bhoora vs. The State* reported as 2015 SCMR 655.