

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 491 of 2022
Cr. Bail Application No. 659 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

28th April, 2022

Mr. Muhammad Munir Ahmed, Advocate for applicant in CrI.B.A. No. 491 of 2022.

Mr. Muhammad Kamran Baloch, Advocate for applicant in CrI.B.A. No. 659 of 2022.

Mr. Muhammad Ahmed, Assistant Attorney General a/w PI Muhammad Sarwar, FIA, I.O. of the case.

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Omar Sial, J.: Atiqur Rehman and Syed Muhammad Hamza have sought post arrest bail in crime number 3 of 2022 registered under sections 4(1), 5 and 23 of the Foreign Exchange Regulation Act read with sections 489-E, 489-G and 109 P.P.C. at the F.I.A.'s State Bank Circle police station in Karachi. Earlier, their applications seeking bail were dismissed by the learned Sessions Judge, Karachi South on 03.03.2022.

2. A brief background to the case is that the aforementioned F.I.R. was registered on 17.02.2022 on the complaint of the State acting through Inspector Gauhar Ali Shah. Shah recorded that he received information that some persons are busy in the business of illegally dealing in foreign exchange on the footpath near the Old State Bank Building. Shah went to the identified place and recovered foreign currency, prize bonds, fake Pakistani currency and a receipt of a money changer. The material was found from a desk which was said to be in the possession of the two applicants.

3. Section 4(1) of the Foreign Exchange Regulation Act, 1947 does not make possession per se of foreign exchange an offence. The said section comes into play when a person not authorized to do so buys or borrows from, or sells or lends to, or exchanges with, any person not being an authorised dealer, any foreign exchange. The learned APG has been unable to show me any evidence which would prima facie show that the foreign exchange that was in the possession of the applicants was for either of the purposes mentioned in the said

section. Whether the applicants were in possession of the foreign exchange and if they were, what was the purpose for possessing such exchange will have to be proved at trial when evidence is led.

4. Section 5 of the Act of 1947 lists 6 acts which if done by a person who is not an authorized dealer would be categorized as an offence. These are:

(a) make any payment to or for the credit of any person resident outside Pakistan;

(b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Pakistan;

(c) make any payment to or for the credit of any person by order or on behalf of any person resident outside Pakistan;

(d) place any sum to the credit of any person resident outside Pakistan;

(e) make any payment to or for the credit of any person as consideration for or in association with— (i) the receipt by any person of a payment or the acquisition by any person of property outside Pakistan; (ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside Pakistan;

(f) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (e).

5. The learned Assistant Attorney General has failed to show to me as to how the alleged possession of foreign exchange by the applicants fall within the ambit of section 5 as admittedly there is no evidence that would prima facie establish the applicants indulgence in the activities listed in section 5.

6. Section 23 of the Act of 1947 provides that whoever contravenes, attempts to contravene or abets the contravention of any of the provisions of the Act of 1947 or of any rule, direction or order made thereunder other than the provisions of section 3, section 3A, section 3AA, section 3B, subsections (2) and

(3) of section 4, section 10, sub-section (1) of section 12 and clause (c) of sub-section (1) and sub-section (3) of section 20 or any rule, direction or order made thereunder shall notwithstanding anything contained in the Code of Criminal Procedure, 1898, be tried by a Tribunal and shall be punishable with rigorous imprisonment for a term which may extend to five years or with fine or with both, and in addition the currency, security, gold or silver, or goods or other property in respect of which the contravention has taken place shall be confiscated. The offences with which the applicants are charged though non-bailable fall within the non-prohibitory clause of section 497 Cr.P.C. Keeping the principles enunciated by the Supreme Court of Pakistan in the case of Tariq Bashir and 5 others vs The State (PLD 1995 SC 34) I do not find any exceptional or extraordinary reasons to deny the applicants bail.

7. Another aspect of the case is that section 19(3) of the Act of 1947 provides that on a representation in writing made by a person authorised in this behalf by the Federal Government or the State Bank and supported by a statement on oath of such person that he has reasons to believe that a contravention of any of the provisions of the Act of 1947 has been or is being or is about to be committed in any place or that evidence of the contravention is to be found in such place, a district magistrate, a sub-divisional magistrate or a magistrate of the first class, may, by warrant, authorize any police officer not below the rank of sub-inspector. (a) to enter and search any place in the manner specified in the warrant; and (b) seize any books or other documents found in or on such place. The learned APG has shown his inability to confirm or show any evidence that the requisite permission as required by Section 19(3) was obtained by the F.I.A. prior to conducting the raid. The sanctity of such an action carried out without the requisite statutory permission will have to be examined and adjudicated upon at trial, however, at this stage it appears prima facie that the raid may have been committed in an unlawful manner.

8. In view of the above observations, I am inclined to allow this bail application seeking post arrest bail. The applicants are therefore admitted to bail subject to their furnishing solvent sureties in the sum of Rs. 100,000 each and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE

