

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1138 of 2020

Date Order with signature of Judge

For hearing of bail application:

22nd March, 2021

Mr. Hassan Sabir, Advocate a/w applicant.
Mr. Gulfaraz Khattak, Assistant Attorney General.

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Omar Sial, J: Muhammad Naqash has sought pre-arrest bail in crime number 17 of 2020 registered under sections 4,5 and 23 of the Foreign Exchange Regulation Act, 1947. Earlier, his application seeking bail was dismissed on 23-7-2020 by the learned Sessions Judge, Malir.

2. A background to the case is that Muhammad Mansoor Khan on behalf of the State lodged the aforementioned F.I.R. on 15-7-2020 reporting an offence that had occurred in the period 2018 to 2020. He recorded that Naqash was involved in the business of hawala and hundi and thus guilty of offences under the FERA, 1947.

3. I have heard the learned counsel for the applicant as well as the learned A.A.G. My observations are as follows.

4. Section 4 of the FERA, 1947 prohibits any person from buying, borrowing, selling, lending, exchanging foreign currency from any person who is not so authorized by the State Bank of Pakistan. Section 5, on the other hand also provides certain restrictions on payments made in foreign currency without the State Bank of Pakistan's approval. At this stage I have been shown no evidence that would establish that the meager foreign currency in the possession of the applicant was not his own and that the dealing in which falls within the parameters defined in section 4 or section 5 of the FERA 1947. This is strange as the F.I.A. claims that it is in possession of electronic evidence to establish the same. However, during these bail proceedings no such evidence has been brought to my notice. It has also not been shown to me that prima facie the

procedure to be adopted to enter and search premises as prescribed in section 19 of the FERA 1947 was followed by the F.I.A. In these circumstances, malafide cannot be conclusively ruled out at this preliminary stage.

5. The offence with which the applicant is charged carry a potential sentence of 5 years imprisonment and though non-bailable fall within the non-prohibitory clause of section 497 Cr.P.C. There appears to be no extra-ordinary or exceptional circumstances to deny the applicant bail pending trial. The applicant is however directed to fully co-operate with the investigating officer and if he fails to do so, the F.I.A. would be at liberty to seek cancelation of bail.

6. The interim pre-arrest bail granted to the applicant is confirmed on the same terms and conditions.

JUDGE