

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-465 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

15.08.2022

Mr. S.M. Imran Alvi advocate for applicant along with applicant Imdad Hussain Bhatti, who is present on interim pre-arrest bail.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh along with Inspector Bashir Ahmed, ACE Matiari.

ORDER

Amjad Ali Sahito, J:- Through this bail application, the applicant / accused namely, Imdad Hussain Bhatti seeks pre-arrest bail in Crime No.01/2020 for the offence under sections 409, 420, 467, 468, 477-A, PPC read with section 5 (2) Prevention of Corruption Act-II of 1947, registered at Police Station ACE Matiari, whereby the bail plea of the applicant / accused was declined by the learned Special Judge, Anti-Corruption (Provincial) Hyderabad vide order dated 16.03.2022.

2. The applicant / accused has been booked with certain allegation as stated in the FIR, which is reproduced as under:-

“This case is being register at PS, ACE Matiari/Hyderabad on behalf of State with the approval of Competent Authority viz ACC-II Hyderabad in its meeting held on 18.11.2019 conveyed through Deputy Director, ACE Hyderabad vide letter No.ACH/2020/R/1095-97 which was initiated on report No.DFC/MAT/2017/39 dated 28.02.2017 and report No.58 dated 08.03.2017 issued by District Food Controller Matiari in respect of misappropriation of wheat bags (full of wheat)/caused loss to Government Exchequer regarding wheat crop 2015-2016 (5422 PP bags full of wheat) each of 50 kg Rs.1625+Rs.100, per PB bags as penalty Total Rs.1725 per PP Bag (5422) PP Bags (full of wheat) X 1725=Rs.93,52,950/-.

The Circle Officer ACE Matiari on 10.03.2017 conducted raid under the Supervision of Civil Judge & Judicial Magistrate-II Saeedabad at Food Godown Bhaledino Kaka Taluka Saeedabad and found that no any stock of wheat was available at Godown BD, Kaka. Such Mashirnama was prepared in presence of Mashirs namely Syed Nasir Kazimi, AFC. District Matiari and Adnan Khanzada, Food Inspector before the Civil Judge and Judicial Magistrate. Such Raid report No.89/CJ/JM/II/Saeedabad

dated 11.03.2017 issued by Amar Lal Civil Judge and Judicial Magistrate-II Saeedabad is collected.

During course of Raid enquiry it is transpired on record that accused namely Imdad Hussain Bhatti caused loss to Government exchequer in connection of Crop 2015-2016 and embezzled wheat bags 5422, PP Bags of Amounting of Rs.53,52,950/-.

Hence, Prima facie offence punishable U/S 409, 420, 467, 468, 477-A PPC R/W section 5(2) Act-II of 1947 against Imdad Hussain Bhatti, Food Supervisor/ In charge PRC Bhaledino Kaka Taluka Saeedabad District Matiari.”

3. Learned counsel contended that though the applicant / accused is innocent and the allegations levelled against him are false and baseless. The misappropriation of alleged wheat bags is nothing but only in order to drag the applicant / accused; such false allegations are concocted one even all offences are not attracted upon the role of applicant / accused. No one has disclosed in the statement(s) recorded under section 161 Cr.P.C. that the applicant / accused has committed offence in their presence. Per learned counsel, the applicant / accused never booked with such allegations prior to the instant incident; he has unblemished service record. FIR is inordinately delayed about five years without any plausible explanation. The applicant is cardiac patient requires treatment as per advice of medical officer. The alleged offence do not fall within the prohibitory clause of section 497 Cr.P.C, as such, the case requires further inquiry. He prayed that the interim pre-arrest bail already granted to the applicant / accused is liable to be confirmed on the same terms and conditions and, if his bail is not confirmed, he will be humiliated at the hands of Anti-Corruption police. In support of arguments, he placed reliance on the cases reported as ‘SHAKEEL ANJUM MINHAS v. THE STATE and another’ [2011 Y L R 274], ‘AFTAB AHMED LAKHO v. THE STATE’ [2012 Y L R 565] and ‘The STATE through Prosecutor-General Sindh, Karachi v. RIAZ AHMED and 2 others’ [2016 P Cr. L J 533].

4. On the other hand, learned A.P.G. vehemently opposed the confirmation of bail to the applicant / accused on the ground that the applicant / accused, who was posted as Food Inspector / Incharge PRC Bhaledino Kaka, Taluka Saeedabad has committed criminal breach of trust and caused loss to the government exchequer by misappropriation of government funds, who has also been dismissed from service, as such, he does not deserve for any leniency. Consequently, learned A.P.G. prayed for dismissal of instant bail application.

5. I have considered the submissions of the learned counsel for the applicants / accused and learned A.P.G. for the State and have gone through the material available on the record.

6. Before further discussion in the instant matter, I would like to spell out that there is a major distinction between pre-arrest and post-arrest bail. One meant as extra-ordinary remedy while latter as an ordinary remedy. Thus, it is obvious for extending extra-ordinary relief, like facts / circumstances are required. The person seeking remedy should be an innocent and law abiding citizen and his alleged involvement in the crime should be mere an allegation tainted with malafide from either side i.e. of police or complainant. No doubt remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from the false implication; however, the Hon'ble Supreme Court of Pakistan while dealing with the bail matter in like cases of corruption has held in the case of '**Gulshan Ali Solangi and others v. The State through P.G. Sindh**' [2020 SCMR 249], as under:-

“Grant of pre-arrest bail is a remedy rooted into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law with a view to protect his dignity and honour. It cannot be granted in every run of the mill criminal case, particularly to the accused confronting prima facie charges structured upon material/evidence, warranting custody, that too, on the basis of positions/pleas, verification whereof, is consequent upon recording of evidence.”

7. It is relevant to mention here that in the instant case, the plea taken by the applicant / accused for his involvement on malafide and apprehension of his humiliation has not been established as it is matter of record, whereby during course of raid inquiry it transpired that Muhammad Bachal Rahpoto Director Food Sindh Authority passed order and directed to applicant / accused Imdad Hussain Bhatti Food Supervisor Incharge Godown PRC Bhale Dino Kaka for deposition of misappropriation amount Rs.93,52,950/- in six installments and in response thereto, the applicant / accused deposited 1st installment amount of Rs.15,50,000/- on 17.08.2018 while remaining amount of Rs.62,00,000/- was not deposited by him, as such, *prima facie*, the applicant / accused has admitted his guilt of committing fraud and criminal breach of trust as well as misappropriation of government amount by causing loss to government exchequer. The learned A.P.G. Sindh has also pointed out that the applicant / accused has been dismissed from service. From the record, it is also reflected that the applicant / accused has also executed his affidavit of default with admission of his guilt. So far loss to the government exchequer is concerned, in the case of '**IMTIAZ AHMED and**

another v. THE STATE' [PLD 1997 Supreme Court 545], the Honourable Supreme Court of Pakistan has held that;

“7. I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by an individual in his private capacity and an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497, Cr.P.C. in the absence of an exceptional circumstance may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstances of the nature warranting refusal of bail even where maximum sentence is less than 10 years' R.I. for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.”

8. So far delay in registration of FIR is concerned, in the cases of Anti-Corruption the inquiries and approval for registration of FIR take some time as the documents on which the authorities rely are to be collected. The inquiry report and material collected by the Investigation Officer appears to be convincing and *prima facie* connect the applicant/accused in the commission of offence. It is well-settled principle of law that the deeper appreciation of evidence is not permissible at the bail stage and only tentative assessment is to be made. At this stage sufficient material is available on the record to connect the applicant with the alleged offence. No ill will or enmity has been pointed out by the learned counsel for the applicant / accused against the complainant.

9. For what has been discussed above, I am of the considered view that the applicant/accused has failed to make out his case for grant of pre-arrest bail in view of subsection (2) of section 497 Cr.P.C. Consequently, the instant bail application is hereby **dismissed** and the interim pre-arrest bail granted to the applicant / accused vide orders dated 12.04.2022 is hereby recalled. Investigating Officer present in the Court and requests for the custody of the applicant / accused, his request is allowed.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant / accused on merits.

JUDGE