

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**

Date	Order with signature of Judge
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**Present: Mr. Justice Muhammad Iqbal Kalhoro  
 Mr. Justice Adnan ul Karim Memon**

1. Cr. Bail Application. No.477/2023	Aqeel Ahmed Khan
2. Cr. Bail Application. No.440/2023	Syed Ahmed Iqbal Asharf
3. Cr. Bail Application. No.478/2023	Tahir Ali
4. Cr. Bail Application. No.480/2023	Tariq Jamali
5. Cr. Bail Application. No.482/2023	Wajat Ahmed Baqai
6. Cr. Bail Application. No.483/2023	Rima Akhtar
7. Cr. Bail Application. No.484/2023	Nawabzada Akbar Hussain
8. Cr. Bail Application. No.486/2023	Usman Shahid
9. Cr. Bail Application. No.487/2023	Syed Jamal Baquar
10. Cr. Bail Application. No.488/2023	Muhammad Saleem Saleemi
11. Cr. Bail Application. No.489/2023	Muhammad Asmar Atique
12. Cr. Bail Application. No.490/2023	Muhammad Ali Haroon
13. Cr. Bail Application. No.493/2023	Syed Hassan Irtiza Kazmi
14. Cr. Bail Application. No.494/2023	Saeed Ahmed
15. Cr. Bail Application. No.508/2023	Muhammad Ali Ansari
16. Cr. Bail Application. No.509/2023	Khurram Shahzad Venjhar
17. Cr. Bail Application. No.517/2023	Saleem Butt

Versus

The State

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Respondent.

**For Applicants:**

Mr. Mohsin Qadir Shahwani, Advocate  
 Mr. Salahuddin Ahmed, Advocate.  
 Mr. Haq Nawaz Talpur a/w Muhammad Asad Ashfaq  
 and Ms. Hamda Ali Khan, Advocate  
 Mr. Shahzeb Akhtar Khan, Advocate  
 Mr. Arshad M. Tayabaly, Talha Javed and Sameer Tayebaly, Advocate.  
 Mr. Shahab Sarki, Advocate  
 Mr. Adnan Butt, Advocate.  
 Mr. Muhammad Wasif Riaz a/w Mr. Muhammad Tahir, Advocate.  
 Mr. Hamza H. Hidayatullah, Advocate.  
 Mr. Faiz Durrani, Advocate.  
 Mr. Ravi Pinjani, Advocate.  
 Sardar Ali Sher Khan, Advocate.

**For Respondents:**

Ms. Wajiha Mehdi, Assistant Attorney General a/w SI Zeeshan Shaikh  
 I.O. FIA CBC, Karachi.

**Date of hearing & order:** 15.03.2023.

**O R D E R**

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**MUHAMMAD IQBAL KALHORO J:** Applicants, who are either bank officials or employees of Hascol Petroleum Company Limited (HPCL) are seeking post arrest bail, and in one case (Cr. B.A. No.440/2023) pre arrest bail, in crime No.01/2022 u/s 409, 420, 468, 471, 477-A, 109 PPC r/w section 5(2) of PCA, 1947 r/w section 3/4 Anti Money Laundering Act, 2010 amended in 2020 registered at P.S. FIA CBC, Karachi containing

allegations of bank scam involving an amount of Rs.54 billion given to HPCL as loan, extended from the year 2015 to 2020, by at least 22 banks as financial facilities that allegedly the applicants in connivance with each other embezzled by committing deliberate default in making payments to the banks. The individual role of each accused is narrated in FIR dated 21.01.2022 with some detail.

2. Learned defense counsel in their arguments have submitted that FIA has no jurisdiction to investigate this matter in view of section 20 of Financial Institution (Recovery of Finances) Ordinance, 2001 and section 84 of the Banking Companies Ordinance, 1962; this is a case of restructuring of loan; even the investigation report shows that from 2014 to 2017 HPCL was regularly paying off the loans with markup satisfactorily and in return receiving enhanced loans; the default if any is not a deliberate act of the accused and is result of *force majeure*; but in any case, negotiation between the banks and HPCL for restructuring the loans is going on and hopefully agreement would be reached sooner than later in this regard; the offence with which the accused have been charged do not fall within prohibitory clause of section 497(i) CrPC and in such cases bail is rule and refusal is an exception; there is delay in registration of FIR which has not been explained; although final Challan was submitted on 19.07.2022 but charge has not been framed against applicants till yet. They have relied upon case of Manzar Khan Vs. National Accountability Bureau (2020 P Cr. L J 136).

3. On the other hand, learned Assistant Attorney General and I.O. have opposed bail to the applicants.

4. We have considered submissions of the parties and perused material available on record. A perusal of FIR somehow shows that initially 30 people were booked as accused in the alleged offence. After preliminary investigation, on 07.02.2022 an interim report / Challan was filed in the Court in which two more accused were added. The number of accused thus became 32. Final Challan was submitted on 19.07.2022 in which only 22 accused were referred to the Court for trial, because, meanwhile, 10 accused had been let off by the IO in the investigation. However, it appears that investigation did not end with submission of the final Challan and continued, though without permission of the trial Court. As later on 06.03.2023, supplementary Challan was filed in which six more accused were let off by the IO. Now, in all, there are only 16 accused, out of 32 booked in the case at some point in time, who have been recommended for the trial by the

prosecution. In FIR, 30 accused are nominated, in the interim Challan 32 accused were arraigned. In the final Challan, names of 10 accused were taken off the list in the calendar and remaining 22 accused were sent up for trial. And ultimately through supplementary Challan only 16 accused out of remaining 22 have been referred to the Court to stand trial. IO of the case, who is present in Court, is still not sure as to how many from sent-up accused he might let off, as, per him, it mainly depends upon discovery of fresh material in favour of the accused. It is clear hence that he is still not in a position to rule out a possibility of discharge of some of the accused sent up by him for trial. And this in turn would *prima facie* mean that investigation and its fallout is still undefined. The IO, further, in reply to a query that whether custody of the accused is required by him for any purpose has replied in negative and has confirmed that for the time being, as far as he is concerned, investigation is over and the accused had fully cooperated with him in the investigation.

5. Notwithstanding the above, when we look at the brief of allegations, we find that it is alleged that different commercial banks in connivance with management of HPCL extended various financial facilities, funded and non-funded, without obtaining tangible securities from HPCL. Then they allowed restructuring of the facilities i.e. conversion of short term facilities to long term facilities and securing those long term restructured facilities against fixed assets. The banks failed to analyze the price and foreign exchange risks while granting credit facilities to HPCL in letter of credits (LCs) beyond the cash conversion cycle of the customer as well as the industry, granting trade facilities in excess of the genuine working capital requirement of HPCL. The banks further failed to compare HPCL's actual local purchases with inland LCs opened by the banks on behalf of HPCL in favor of Byco, diluting security structure and thus *mala fide* causing wrongful gain and loss to the banks.

6. Against these allegations, however, either no evidence *prima facie*, or very scanty evidence, has been collected by the prosecution to show that accused have taken/earned any material gain out of it. Allegations, at the most, *prima facie* appear to be of committing delinquency in performance of duty by the accused resulting into default. Whether such delinquency was a result of mala fide and criminal intention of the applicants to cause gain to themselves or was an outcome of *force majeure* is yet to be assessed in the trial. Further, the entire case of the prosecution is based on documentary evidence which the prosecution has already collected and submitted in the Court through final and supplementary Challan. So indeed there is no apprehension of

the same being tampered with by the applicants in case they are released on the bail. The fact that some of the accused named in FIR with a particular role have been let off by the IO is yet another circumstance sufficient to dilute severity of allegations against the remaining accused, and makes their case to be of further enquiry. For instance, the President of NBP namely Saeed Ahmed Khan, who has been assigned specific role in FIR and in the final Challan, has been exonerated by means of the supplementary Challan. When we asked the IO to explain his release, and not the others, he simply said that the said accused had informed him that he had acted on the note sheets prepared and sent to him by his subordinate staff. This surprisingly he found a reasonable justification to let him off!

7. Further, the IO could not satisfy the Court that responsibility of exonerated accused is lessor or somehow different than the liability of the accused, who have been sent up by him for trial. He has further categorically expressed that he does not require custody of the applicants as he has already concluded the investigation in which the applicants had fully cooperated with him. Although learned Assistant Attorney General has opposed the bail to the applicants but she could not deny the factual position that all the offences applicants have been charged with do not fall within prohibitory clause of section 497(i) CrPC and in such cases grant of bail is rule and its refusal is an exception. She and IO have not been able to establish either that confinement of applicants in jail is in the public interest, or there is apprehension of repeat of offence by them. Ultimately, when we in such circumstances asked the IO as to why the applicants be allowed to rot in the jail, he could not think out any reply and pleaded that a reasonable surety be imposed upon each accused with a direction to them to submit their passport respectively with Nazir of this Court as a condition against bail, which we do not find arbitrary or against the interest of justice. We, therefore, for foregoing discussion, allow these applications and admit the applicants to bail in subject crime against surety of One million (Rs.10,00000/-) each in addition to submitting their passport with Nazir of this Court.

8. Since the IO has stated that custody of applicants is not required for further investigation which has been completed and in which the applicants had fully cooperated, in this position, coupled with the discussion undertaken by us above, interim pre arrest bail granted to applicant Syed Ahmed Iqbal Ashraf in Cr. Bail Application. No.440/2023 is confirmed on the same terms and conditions. Additionally, he should

furnish extra surety of Rs.500,000/- and submit passport with Nazir of this Court.

The observations made hereinabove are tentative in nature and shall not prejudice case of either party at the trial.

The Cr. Bail applications are disposed of accordingly.

JUDGE

JUDGE

A.K.