

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application Nos. 329,306, 420 & 452 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

31-03-2023

Mr. Uzair A.K. Ghori, Advocate for applicants in Crl.B.A. Nos.329, 306 & 452 of 2023.

Mr. Shah Mehmood Maitlo, Advocate for applicant in Crl.B.A. No.420 of 2023.

Mr. Muhammad Ahmed, Assistant Attorney General a/w I.O.

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Omar Sial, J: Mohammad Danish, Kashif, Abid Ali (through Criminal Bail Application No. 329 of 2023), Mohammad Imran (through Criminal Bail Application No. 306 of 2023), Ali Asghar (through Criminal Bail Application No. 420 of 2023), Mohammad Aamir and Abdul Rauf (through Criminal Bail Application No. 452 of 2023) have all sought post arrest bail in crime number 1 of 2023 registered under sections 4(1), 5 and 23 Foreign Exchange Regulations Act 2020 and sections 34 and 109 P.P.C. Earlier, their applications seeking bail were dismissed on 07.02.2023 by the learned Sessions Judge, Karachi South acting in his capacity as a Tribunal under the FERA.

2. A background to the case is that the F.I.A. received information that Mohammad Danish and Mohammad Imran were running a business through which they were transferring funds abroad through the *hawala* system. The other applicants were either employees in the business or persons who are accused of transferring funds through the informal banking system. F.I.A. conducted a raid on the premises and seized Rs. 950,000 in cash along with a number of cheque books and some mobile phones. I have been explained by the learned Assistant Attorney General that at this stage the piece of evidence that the F.I.A. has our messages sent and received through WhatsApp to show the involvement of the applicants in the hawala business. The F.I.R. in the case was registered on 19.01.2023.

3. I have heard the learned counsels for the applicants as well as the learned AAG who was assisted by the investigating officer of the case. My observations and findings are as follows.

4. The investigating officer of the case confirmed what the learned AAG had submitted i.e. the only piece of evidence that the F.I.A. has are WhatsApp conversations. He cited non-co-operation of foreign authorities to assist the F.I.A. as a reason for the lack of evidence at this stage; he however assured the Court that efforts to detect evidence was ongoing.

5. It has been argued that as authorization was not obtained from the State Bank of Pakistan by the F.I.A., the action taken cannot be said to be legal and hence the applicants are entitled to bail. Section 23 of the FERA provides that whoever contravenes, attempts to contravene or abets the contravention of any of the provisions of this Act 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. The offences with which the applicants are charged however fall within sections 4(1), 5 and 23 of the FERA, meaning thereby that it is the Tribunal that had to take cognizance. Section 23 (3) of the FERA provides that a Tribunal shall not take cognizance of any offence punishable under this section or of an offence punishable under Sections 122 and 150 of the Income Tax Ordinance, 1979 (XXXI of 1979), as applied by Section 19, except upon complaint in writing made by a person authorised by the State Bank in this behalf. To this extent the argument regarding not obtaining authorization is valid. The argument, however, is not valid as far as the present case is concerned. The reason for this is that the second proviso of section 23(3) introduces an exception to the rule that State Bank of Pakistan's authorisation should precede legal action. This proviso limits the requirement of obtaining permission to cases where authorized dealers were involved in violations of the FERA. I have been made to understand that the applicants were not running an

authorized money exchange and hence the second proviso would be prima facie applicable to them.

6. Irrespective of what is stated in the above paragraph, I note that the transcripts of the WhatsApp messages are not available at this moment. The admissibility of those messages as evidence will have to be determined at trial. In light of the F.I.A.'s own admission that it has struggled to corroborate the messages with corresponding evidence has been hampered tilts the balance of bail towards the applicant's side. Further, an offence under section 23 carries a maximum penalty of 5 years and although not bailable fall within the non-prohibitory clause of section 497 Cr.P.C. Keeping the principles of Tariq Bashir and 5 others vs The State (1995 PLD SC 34) in mind, I find no exceptional or extraordinary grounds to deny the applicants bail. Admittedly the entire evidence as far as Pakistan is concerned is with the F.I.A. and does not seem likely that the applicants are in a position to tamper evidence that exists in foreign jurisdictions. F.I.A. itself has ample powers to prevent the escape of the applicants from the country.

7. The applicants are admitted to bail however are directed to continue to co-operate fully with the F.I.A. investigators. In the event the F.I.A. is of the view that the applicants are not co-operating with the investigation or if the learned Tribunal is of the view that trial is being delayed because of the applicants, the learned Tribunal itself will be empowered to cancel these bails.

8. The surety amount for applicants Mohammad Danish and Mohammad Imran is fixed at Rs. 1,000,000 per applicant whereas the surety amount of the remaining applicants is fixed at Rs. 500,000 per applicant. Solvent sureties to the satisfaction of the learned Tribunal will be furnished and the customary P.R. Bond also be taken from each applicant.

JUDGE