

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 372 of 2023

Applicant/ Accused : Kamran Waheed and Ahmed Umer
Khan through Raja Meer Muhammad,
Advocate.

Criminal Bail Application No. 304 of 2023

Applicant/ Accused : Rehmatullah son of Gulab Khan
through Israr Ahmed Abro,
Advocate.

Complainant/State : Through Mr. Gul Faraz Khattak,
Assistant Attorney General along with
Mr. Sheikh Suhail Mehmood,
S.H.O./I.O., FIA, AHT, Karachi.

Date of hearing : 22-03-2023

Date of order : 22-03-2023

*FIR No. 05/2023
Under Section 3(2), 13 & 14 Foreigner Act, 1946
Read with 420, 468, 471 and 109 PPC
P.S. FIA AHT, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants/ Accused seek post-arrest bail in the aforesaid crime after the same was rejected by the Special Judge (Central)-II, Karachi *vide* order dated 31.01.2023.

2. Per the FIR, on the night between 7th and 8th January, 2023, the Applicant Rehmatullah and his brother Muhammad Wali were arrested from the Jinnah International Airport, Karachi; that Rehmatullah was trying to board a flight to Toronto, Canada on a Pakistani passport coupled with a study permit; that the exit stamp of the immigration authority on his passport and boarding pass was found to be fake; that his brother and co-accused Muhammad Wali,

who was complicit in the offence, was waiting outside the passenger hall; and that both disclosed that they had paid off agents namely, Usman and Ilyas to facilitate Rehmatullah's exit from Pakistan on fake documents. As regards the Applicants Kamran Waheed and Ahmed Umer Khan, who were Head Constables of the FIA, it is alleged that they had facilitated Rehmatullah in reaching the boarding gate. Apart from the offences of cheating and forgery under the PPC, all Applicants are all booked for offences under sections 3(2), 13 and 14 of the Foreigners Act, 1946 on the ground that investigation revealed that Rehmatullah and his family had entered Pakistan illegally from the Afghanistan 15/20 years ago.

3. Heard learned counsel for the Applicants, the learned Assistant Attorney General, and perused the record.

4. Regards the offences alleged under the Foreigners Act, 1946, apparently, Rehmatullah was travelling on a Pakistani passport and CNIC, and it is not alleged that the same were forgeries in itself, rather the allegation is that the same were obtained unlawfully by Rehmatullah by portraying himself as Pakistani citizen after his family had brought him as a minor into Pakistan from Afghanistan by unlawful entry 15/20 years ago. All educational certificates produced for Rehmatullah are of Pakistan. In such circumstances, whether the Applicant Rehmatullah is a foreigner or a citizen, remains a question of fact that has yet to be determined by the trial court, and till such time the offences alleged against all three Applicants under the Foreigners Act, 1946 remain doubtful.

5. Regards the remaining offences of cheating and forgery under sections 420, 468 and 471 PPC, those are for affixing a fake exit stamp of the immigration authority on the passport and the boarding pass. It has yet to be seen whether Rehmatullah was aware of such forgery or whether he was misled by the accused agents Usman and Ilyas. As regards the role attributed to the Applicants Kamran Waheed and

Ahmed Umer Khan as Head Constables of the FIA who facilitated Rehmatullah, the evidence thus far against them is not conclusive. The offences alleged of cheating and forgery also do not fall within the prohibitory clause of section 497 Cr.PC.

6. For the foregoing reasons, the case against all three Applicants calls for further inquiry. Therefore, the Applicants are granted bail subject to furnishing solvent surety in the sum of **Rs.200,000/- [Rupees Two Hundred Thousand Only]** each alongwith P.R. Bond in like amount to the satisfaction of the trial Court with the observation that they shall attend the trial Court regularly.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

PA/SADAM

JUDGE