# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

*Criminal Revision Application No.S-174 of 2023*

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| Applicant: | Muhammad Ali Hashmi son of Ahmed Ali, through Mr. Zulfiqar Ali Abbasi, Advocate. |
| The State: | Through Ms. Rameshan Oad, A.P.G. |
| Date of hearing: | 18.12.2023 |
| Date of decision: | 22.12.2023 |

## O R D E R

KHADIM HUSSAIN TUNIO, J.- Through this Criminal Revision Application, the applicant Muhammad Ali Hashmi has impugned the order dated 01.12.2023 thereby learned Judge of Anti-Corruption (Provincial) Hyderabad has admitted him to bail, but subject to condition that his surety shall furnish liability amount of Rs.5,000,000/- in shape of Saving / Defence Certificates clarifying therein that if he is later found guilty, the amount will be confiscated otherwise will be returned if acquired acquittal.

2. The allegation against the applicant leveled in FIR No.02 of 2021 is that while posted as Supervisor / Incharge at Jaffar Khan Laghari in his tenure as the District Food Controller, there was a shortage of 478 jute bags weighing 66744 kilograms for which he was provided time to recoup the same, but he failed in doing so. Additionally, 802 empty jute bags and 795 PP Katta were also found missing, bringing the total loss of the government exchequer to the tune of Rs.3,684,793/-.

3. Learned counsel for the applicant has primarily argued that learned Trial Court fixed the huge liability upon the applicant which is opposed to law and facts as the trial is yet to be concluded until he has not been proven guilty; that the salary as well as CNIC of applicant is already blocked even his family could not meet the expenses of daily routine, as such, the surety amount could not be arranged; that order of learned Trial Court in respect of furnishing liability amount in shape of saving / defence certificate requires interference of this Court, therefore, prays for setting-aside the same.

4. In rebuttal, the learned APG opposed the Criminal Revision Application on a variety of grounds while submitting that the contentions

raised by the applicant's side are not helpful to him as a huge government exchequer has been ruined and in the given circumstances, the application is not maintainable and may be dismissed accordingly.

5. I have heard the learned counsel for the parties and have perused the record available before me.

6. Admittedly, a huge loss has been caused to the government exchequer which fact is established from the undisputed record. However, while the extent of the loss is not in doubt, the culpability of the applicant at this stage without a proper trial is. The principle of bail serves as a cornerstone of any fair and just legal system because it safeguards against arbitrary deprivation of liberty, allowing an accused to remain free while awaiting trial as the law of the land mandates that an accused be presumed innocent until proven guilty. Bail aims to achieve two primary objectives, firstly ensuring the appearance of an accused in court, and secondly preventing flight. Undoubtedly, when bail is set at an unattainable level, these two aims are met, but the concept of pre-trial punishment is found to prevail, disrupting balance. For individuals of limited means, exorbitant sums act as an insurmountable barrier, effectively nullifying the bail order because of the inability to make ends meet. In the present case, the Government exchequer is said to have faced a loss of an amount north of three and a half million, however the Trial Court has set the surety amount of the applicant to five million. This violates the principle of proportionality, constituting a disproportionate interference with the right to liberty under Article 4 of the Constitution of Islamic Republic of Pakistan. Moreover, the notion of keeping the surety amount identical to the amount lost cannot be subscribed with either, that it is because the law as set out in S. 499 CrPC which is the only provision speaking on 'bonds' which an accused furnishes for bail, the requirement is the satisfaction of the police officer or the Court. The Court cannot lose sight of the fact that no remedium, no recompense can truly atone the curtailment of liberty without justifiable cause because behind bars lies a stolen sunrise, a missed opportunity – time lost can never be regained. There are many precedents where the superior courts have consistently held that surety amount should not harsh so as to invalidate the bail granting order. Reliance, if required, is placed on the case of Sikandar Abdul Karim v. The State (1998 SCMR 908) wherein the accused faced charges of

causing a loss to the tune of five billion rupees and the surety amount was reduced from 104 million to 40 million.

7. Pursuant to the above discussion, finding the surety amount to be excessive, I find that the applicant has made out a case for reduction in the surety amount. Resultantly, instant Revision Application is allowed and as such, the surety amount originally set to rupees five (05) million is brought down to rupees two and a half (2.5) million which surety the applicant shall furnish to the satisfaction of the Trial Court.

J U D G E