

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. B.A. No.802 of 2023

&

Cr. B.A. No. 1182 of 2023

Date

Order with signature of Judge

For hearing of bail application.

03.07.2023

Mr. Zufiqar Ali Qureshi, Advocate for the applicant/accused in Cr. B.A. No.802 of 2023.

Mr. Shakil Ahmed, Advocate for the applicant/accused in Cr. B.A. No.1182 of 2023

Ms. Rubina Qadir, APG.

Saif Ali Khan, Complainant is also present.

This consolidated order shall decide the two bail after arrest applications filed by Applicant Muhammad Aslam son of Nawab Ali and Applicant Ayaz Khan son of Sajawal Khjan in FIR No. 20/2023 lodged under Section 420, 489-B PPC at P.S. Azizabad, Karachi.

The allegation against the applicants/accused is that they cheated the complainant and used forged and counterfeit currency notes as genuine while purchasing the car from the complainant.

Per learned counsel for the applicant/accused that the applicants are neither named in the FIR nor has been described with specific role; that the FIR has been lodged after the delay of at least 13 days and it is settled principle that prompt FIR is necessary to set the criminal law into motion. He lastly contended that no direct evidence available against the applicants/accused as well as before the learned trial Court the complainant also extended his no objection for the grant of bail to the applicants/accused. Learned counsel for

the Applicant Ayaz Khan submitted that Applicant Ayaz is senior citizen and seriously ill, therefore, he is entitled for bail on this sole ground.

On the other hand, learned APG submitted that the offence of like nature is menace to the society and that the cheating and defrauding the innocent citizen has become order of the day, therefore, the accused be dealt with iron hands so that the crimes which are against the society be eradicated. While concluding her submissions, she prayed for cancellation of bail.

I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material.

From perusal of FIR, it transpires that the applicants are neither named in the FIR nor have been described with any specific role of using the counterfeit or forged currency notes as genuine. In order to constitute an offence under section 489-B, P.P.C. a person must have the knowledge or have reasons to believe that currency notes in question were forged or counterfeit, which requires evidence. There is nothing on record that applicants/accused are previous convicts. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant¹. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the

¹ Per Muhammad Ali Mazhar J. in *Fahad Hussain v. The State* (2023 SCMR 364)

time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

Reverting to the submission of learned counsel for the applicant/accused Ayaz Khan to the effect that he is sick and infirm person, therefore, entitled for the grant of bail. First proviso to section 497(1), Cr.P.C. makes the power of the court to grant bail in the offences of prohibitory clause of section 497(1) alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, equal to its power under the first part of section 497(1), Cr.P.C. It means that in cases of sick or infirm accused etc. as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1), Cr.P.C. The exceptions that justify the refusal of bail are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence. It has not been introduced on record by the

learned APG that the applicants/accused are hardened/desperate and barbaric criminals and if released on bail would tamper the prosecution evidence. Furthermore, no criminal data of the applicants/accused are in record, therefore, in the circumstances at hand and having scanned and ruminated the material placed on record more particularly when the complainant tendered his no objection before the learned trial Court for admitting the applicants/accused on bail, I have reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case and keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

As a result therefore, these bail applications are allowed. Applicants Muhammad Aslam and Ayaz Khan are granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) each with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

JUDGE

Aadil Arab