

ORDER SHEET**IN THE HIGH COURT OF SINDH AT KARACHI****Cr. Bail No. 1818 of 2023**

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

11.09.2023

M/s. Muhammad Ilyas Khan Tanoli & Umar Farooq Khan advocates for the applicant
 Mr. Mubashir Ahmed Mirza Assistant Attorney General along with SI Shahid Mustafa AHIC (KYC)

Through the instant bail application, the applicant Jasim has approached this Court for a grant of post-arrest bail in FIR No.70/2023 registered for offenses under Section 3(2), 13/14, Foreigners Act 1946 R/w Section 419/420/468/471/109 PPC of P.S FIA, AHT Circle, Karachi.

2. That according to the prosecution case, applicant Jasim was proceeding from JIAP Karachi to Qatar by flight No. QR-605 and during the process of Immigration clearance he was suspected to be a non-National/Iranian National and was detained on such suspicion, such incident was reported to the FIA AHT Circle Karachi, who registered the F.I.R No.70 of 2023 under Section 3(2), 13/14, Foreigners Act 1946 R/w Section 419/420/468/471/109 PPC on 14.7.2023.

3. M/s Umar Farooq Khan and Muhammad Ilyas Khan Tanoli learned counsel for the applicant have submitted that the applicant/accused is a laborer and innocent and has falsely been implicated in this case by FIA based on suspicious He next argued that the applicant/accused is a bonafide and law-abiding citizen of this Country and has a plethora of documents, which shows that the applicant is a Pakistani national, residing at Gawadar along with his family, who have also obtained their CNIC from NADRA, and Passport from concerned authority, which clearly show that the applicant is Pakistani national and because of authenticate documents, Sections-3 (2) 13, 14 of Foreigners Act 1946 is not attracted. Per learned counsel, the applicant has not committed fraud at all with any of the agencies of this country and he has been implicated in this case without any corroboratory evidence. He emphasized that it is a well-settled principle that when an accused is charged under two different statutes or laws, then he can only be tried for offenses under the law, which provides a lesser sentence provided that the offenses are alike or similar; and, in the present case the applicant has been charged with different laws i.e Foreigners Act 1946 and PPC. He asserted that the

case of the prosecution entirely depends upon documentary evidence, which seems to be in possession of the prosecution and the challan has already been submitted before the trial court as there is no possibility of tampering with the evidence; that the applicant has held Pakistani Passport and National Identity Card and the genuineness or falsehood of such documentary evidence could be determined by the trial Court after the trial and till date the aforesaid documents are valid, hence, it is a case of a further inquiry to the extent of the question whether the applicant is Pakistani National or Iranian National thus this factum is to be determined by the trial court. He has further argued that the involvement of the applicant in the present case is a result of mala fide on the part of F.I.A personnel, who intended to portray the applicant as Iranian National without evidence. He stressed that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided in the schedule for the alleged offenses, and the offenses with which the applicant is charged, are punishable by a maximum sentence of three to seven years and not hit by the prohibition contained in Section 497 Cr. P.C., therefore, bail in such cases is normally not refused. The learned counsel emphasizes the ground that in the present case, it is not alleged by the F.I.A that CNIC and Passport obtained by the applicant was/is a forged document or obtained while giving fraudulent information to the concerned authorities, who have not come forward to allege against the applicant. He added that the Investigating Officer has not yet made efforts to cancellation his CNIC and passport and is unable to say anything about whether any show-cause notice was issued to the present applicant or he was heard before taking coercive action being a Pakistani National and detained him without evidence as no any inquiry was/is conducted in this regard. Learned counsel submitted that the Investigating Officer has/had no material with him in this regard and to date no action was/is taken against the concerned official of Passport and NADRA who allegedly issued CNIC or passport to a person who according to him is not a Pakistani National; that the learned AAG, except saying that matter has been referred to concerned authorities, was/is unable to say anything further. Learned counsel argued that when a person is accused of having committed a crime which he could not commit without either involvement of duping of State functionary unless such role of the State functionary was/is also on record and if circumstances so warrant, no action has been taken against the State functionary, it is unfair to prosecute the present accused only, this, therefore, obviously is a case of further inquiry. In support of his contentions, he relied upon the cases of Abdul Qayoom vs. The State 2010 MLD 1251, Mehboob Alam vs. The State PLD 1996 Karachi 144, and Muhammad Yousuf Vs. The State (1995 P Cr. L.J 1348). He lastly prayed for allowing the bail application.

4. Mr. Mubashir Ahmed Mirza learned Assistant Attorney General assisted by SI Shahid Mustafa AHIC (KYC) has opposed the grant of bail to the applicant on the ground that the applicant/accused is not a Pakistani national but entered into the territory of Pakistan through Iran in violation of the provisions of Sections-3 (2) 13, 14 of Foreigners Act 1946, which is an offense under Section 14 of the Foreigners Act, therefore, he is not entitled to the concession of post-arrest bail. He next submitted that the purported parents of the applicant were contacted and have certified that they have nothing to do with the present applicant, neither he belongs to their family nor do they have any family relationship with him. He further submitted that during the investigation investigating officer recovered an Iranian card. His CNIC passport and other necessary documents were sent to the concerned department for verification however result is awaited. He further submitted that the purported family of the applicant has not come forward to record their statement under Section 161 Cr. P.C. He has further submitted that if the bail is allowed to the applicant he will abscond away, which may create hindrance in the investigation process, therefore he is not entitled to the concession of bail at this stage. He lastly prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. I am fully cognizant of the well-settled principle that at the bail stage, the court is not to make a deeper examination and appreciation of the evidence collected during the investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question of whether or not there exists reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un rebutted, may lead to the inference of the guilt of the accused.

7. In the present case, a tentative assessment of the record reflects that the applicant was arrested while he was proceeding to Qatar on flight No. QR-605 on the strength of Pakistani Passport No. AE-8851431 such cognizable offense was incorporated under Section 154 Cr. P.C. on 14.07.2023 by F.I.A, his bail plea was rejected by the trial Court on the premise that this case is at the initial stage and the applicant is a foreign national and if he is released, he will abscond away. To elaborate on the subject it is expedient to have a glance at Sections 9 and 14 of the Foreigners Act, 1946, which cast a duty upon the applicant to establish that

the applicant was/is not a foreigner and such penalties if contravenes the Act is reproduced herein below:-

"Section 9 Burden of Proof.---If in any case not falling under section 8 of any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving of that such person is not a foreigner or is not a foreigner of such particular class for such description as the case may be, shall notwithstanding anything contained in Evidence Act, 1972 lie upon such person.

14. Penalties. Where any person contravenes any provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or order, he shall, except as otherwise provided herein, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine, and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall liable to be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court as to why such penalty should not be paid. (2) Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand rupees.]

14A. Restriction release on bail. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as Code, any accused of an offence punishable under subsection (2) of section 14 shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of such offence."

8. It was revealed from the record and during arguments, that the applicant has relied upon his CNC issued by the NADRA authority, and his Passport issued by the competent authority. The nature of documents produced by the applicant in support of his case, as highlighted above, appears to be issued by a competent authority/organization certainly after due verification and inquiry and cannot be termed as valueless as the documents highlighted above when confronted to learned Assistant Attorney General, he has no answer with him. However, he argued that the applicant is not a Pakistani National and according to him, there is oral evidence that the applicant is Iranian. Reverting to such contention of the learned Assistant Attorney General, it suffices to say that documentary evidence always prevails upon oral evidence and his card has been recovered from his possession and merely saying that the applicant is Iranian by origin for that fact alone, prima facie he cannot be termed as a foreigner. During arguments, I have also asked the question from learned A.A.G, whether the documents as referred to above and produced by the applicant have been canceled by the concerned authorities, again he has no answer, but to say that every thing is under process which will take time to complete the process. The question whether the bail can be

withheld based on the analogy that the case is under process, the answer is negative for the reason that the Court has to tentatively assess the material available on record only and will not wait till the prosecution take their sufficient time to complete the investigation; that the FIR was lodged on 14.07.2023 and still the prosecution is not able to collect sufficient incriminating material to prima facie connect the applicant with the alleged crime.

9. After analyzing the material available on the record, it appears that where the case entirely depends upon documentary evidence, which seems to be in possession of the prosecution, the question of tampering with the evidence does not arise. It is well-settled law that where an accused is charged under two different Statutes or laws then he can only be tried for offenses under the law, which provides a lesser sentence provided that the offenses are alike or similar; that where a person is accused of having committed a crime which he could not commit without either involvement of duping of State functionary unless such role of the State functionary is also on record and if circumstances so warrant, no action has been taken against the State functionary, it is unfair to prosecute the applicant only without documentary evidence.

10. When the question of the national status of the accused requires inquiry, particularly in the circumstances when the accused produced a series of documents to establish his nationality, the accused is entitled to be considered for bail.

11. In the present case, the applicant has produced his CNIC and Passport to substantiate that he is Pakistani by birth. Prima facie, these documents have neither been challenged up til now nor controverted by AAG or FIA Officer. In response to a query from the learned AAG as well as the officers of FIA present in Court regarding the authenticity of these documents, they failed to furnish a satisfactory reply regarding the said documents except that the FIA had written letters to the concerned departments and send the documents for verifications but the reply is still awaited.

12. Accordingly, on the tentative assessment of the facts and circumstances of the case, I am of the tentative view that the matter squarely falls within the preview of further inquiry as the FIA authorities are still seeking verification of the documents and making only correspondence with other departments and are not clear about the citizenship of the applicant whether he is Pakistani or Iranian and even they have not sought cancellation of CNIC and Passport of the applicant and they only conducting the rooming inquiry. The offenses under

sections 420 and 471, P.P.C. are bailable, insofar as the offense under section 468, P.P.C. is concerned the punishment does not fall within the prohibitory clause of section 497, Cr.P.C, and the applicability of section 419 PPC is yet to be determined by the trial court, therefore, prima-facie, the material currently available on the record of the case is not sufficient to say that there are reasonable grounds for believing that he has committed the alleged offenses; but there are sufficient grounds for further inquiry into his guilt in terms of Section 497(2) of Cr.P.C. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Muhammad Sarfraz Ansari Vs.The State **2021 PLD SC 738** and Malik Muhammad Tahir Vs.The State **2022 SCMR 2040**.

13. As far as Section 14 Foreigners Act is concerned, the evidence against the accused is still to be evaluated and it is yet to be seen as to whether it is applicable under the attending circumstances of the case or not. In such circumstances of the case, the Supreme Court of Pakistan in the case of Haji Wali Muhammad v. The State **1969 SCMR 233** held as under:-

"As a general rule on a charge of the kind made in this case not invoking a sentence of death or transportation for life, bail should ordinarily be allowed disregarding the grounds of the seriousness or anti-social nature of the offence, unless there are strong grounds, in the shape of evidence for the belief that he is guilty".

14. The learned counsel for the applicant also placed reliance on **PLD 1988 Karachi 64**, wherein the accused was charged under section 14-Foreigners Order, 1951, Article 3(a), and he was allowed bail. Reliance can well be made on **MLD 2017 Page 259**, wherein it was held that bail cannot be denied to the accused when it is a well-settled principle of law that bail cannot be withheld as conviction in advance. The rest of the sections do not fall within the prohibition contained in section 497, Cr.P.C. Moreover, the accused/ applicant is neither required for investigation nor is a previous convict.

15. The Supreme Court in the case of Saeed Ahmed Vs. The State **1996 SCMR 1132** held as under:-

“3. The learned counsel for the petitioner contended that there is no prohibition for grant of bail in respect of offences mentioned above, but with mala fide intention subsequently offence under section 409, P.P.C. has also been added in order to bring the petitioner's case within the prohibitory clause of section 497, Cr.P.C. The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. The objection of the learned counsel regarding addition of section 409, P.P.C. may carry some weight while considering the bail, application. As there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, in the circumstances, we convert the petition into an appeal and allow it, and grant bail to the petitioner on furnishing one surety in the sum of Rs.50,000 to the satisfaction of the Deputy Registrar, Supreme Court, Lahore.”

16. Therefore, I am of the tentative view that reasonable grounds do exist for believing that the matter requires further probe into the guilt of the accused/ applicant.

17. In view of the above, this bail application is accepted and the applicant is admitted to bail provided he furnishes solvent surety to the tune of Rs.5,00,000/- (Rupees five lac) with P.R bond in the like amount to the satisfaction of the learned trial court, who shall ensure that the surety must be local, reliable and men of means. As for the apprehension of the learned AAG that the applicant will abscond away, suffice it to say that his name shall also be placed on the ECL forthwith and he shall ensure his attendance on every date of the trial proceedings so that the trial is not delayed on his account. In the event he fails to do so, the F.I.A. shall be at liberty to apply to recall this order. The applicant and or F.I.A. personal whoever is in possession of Passport No. AE-8851431 of the applicant shall surrender with the Nazir of this Court.

A Copy of this order shall be sent to the Ministry of Interior, Government of Pakistan for placing the name of the applicant on ECL.

J U D G E