

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1532 of 2022

Date	Order with signature of Judge
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For hearing of bail application

23.8.2023

Mr. Muhammad Naeem Memon advocate for the applicants alongwith applicants

Mr. Mubashir Ahmed Mirza, Assistant Attorney General alongwith Aftab Ali Soomro, SI/SHO, FIA SBC Karachi

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After being involved in F.I.R No.10/2022, registered under Section 420/489-G/34 PPC read with Section AML Act , 2010 (amended in 2020), at PS FIA SBC, Karachi, the applicants are looking for their pre-arrest bail. The earlier bail plea of the applicant under Section 498 Cr.PC has been declined by the learned trial court vide order dated 23.07.2022 in Cr. Bail Application No. 1981/2022.

2. The accusation against the applicants, as set out in the aforesaid crime, is that they in connivance with each other manipulated the system of purchase of prize bonds of the different denominations during the period from the year 2019 to 2021 and were/are found involved in illegal business of sale/purchase of winning prize bonds from unauthorized vendors/dealers in a fraudulent manner by violating the Rules & Regulation of SBP to laying ill-gotten money which caused loss to Nation Exchequer in form of Tax Evasion so also the transaction in their bank accounts do not commensurate with their declared profile.

3. The learned counsel for the applicants/accused has argued that the applicants/accused is innocent and has falsely been implicated in this case by FIA with malafide intention and ulterior motives. Learned counsel emphasized that there is nothing on record to suggest that the subject amount was derived from any illegal business of Hundi/Hawala or other unlawful means, which is a question, that cannot be resolved based on material available on record and needs further inquiry under section 497(2), Cr.P.C. he next argued that mere taking/ possessing local money is not a crime until and unless the same is proved to be derived from any illegal means. Per learned counsel Section 3 of the Act,2010, prescribes the offense of money laundering, while Section 4 provides the punishment for the commission of such an offense, the expression 'proceeds of crime' appears to be a prerequisite of an offense committed under the Act. He added that any money or property derived

or obtained by any person directly or indirectly as a result of criminal activity is said to be proceeds of crime, which is not the case at hand. Per learned counsel, the prosecution has not brought any documentary evidence that may depict that applicants were dealing in the Hundi/Hawala business. Besides, there is nothing on record regarding the previous history of conviction or involvement of the applicants in such offenses. He argued that there is an inordinate delay in lodging an FIR without any plausible explanation, which is also a good ground for confirmation of bail of the applicant. He further stated that the matter pertains to documents that are already in possession of the Investigation officer, there is no likelihood of tampering with the prosecution case; that the alleged offenses do not fall within the prohibitory clause of Section 497 Cr. P.C. and bail in such an offense is a rule and rejection. In support of his contention, he relied upon various documents attached with the memo of bail application and the case of *Rafiullah vs. The State (2019 P Cr. L.J 1608)*, he also relied upon the reply to the show cause notice issued to the applicants. He lastly prayed for allowing the bail application.

4. On the other hand, learned DAG assisted by the Investigation officer FIA present in court has submitted that the applicants are involved based on the Financial Intelligence Report. The applicants/accused were maintaining several bank accounts in their names and were found frequently conducting transactions which do not commensurate with their declared profile at the time of opening of bank accounts. He has further contended that applicants have purchased a huge quantity of winning prize bonds of different denominations from unauthorized vendors/dealers to legalize their ill-gotten money. The applicants failed to explain the transaction of huge amounts in their bank accounts. The learned DAG pointed out that under the Act, 2010 money laundering is punishable with rigorous imprisonment for a term that shall not be less than one year but may extend up to ten years and shall also be liable to a fine that may extend up to twenty-five million rupees and shall also be liable to forfeiture of property involved. As per learned DAG applicants were/are motivated by profit and as a result, they illegally gained money to erode financial systems. He added that applicants transformed the monetary proceeds derived from criminal activity into funds by showing legal sources, therefore they are not entitled to extra-ordinary relief, and therefore their bail application may be dismissed.

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

6. Tentative assessment of the record reflects the following aspect of the case:-

- a) *On 20-08-2019 applicant No.3 opened Bank account No. 0437007000002496 in Faysal Bank, Denso Hall Bram Karachi with a cash deposit of 1 50,000/- The purpose of opening said account by the accused was for depositing the Prize Bonds which were discontinued by the Government of Pakistan. They discontinued Prize Bonds in the said account to credit their encashment amounts in his account and then debit/withdraw of amounts from his said bank account.*
- b) *On the same day i.e. 20-08-2019, the accused deposited 25 Prize Bonds each prize bond of Rs. 40,000/- in the said account and credit encash amounts of these Prize Bonds PKR 1,000,000/- in his said account. Later on the next day i.e. 21-08-2019 the accused withdrew an amount of Rs. 900,000/-*
- c) *In an aforesaid manner the accused deposited Prize Bonds of different Price denominations total valuing approximately PKR 8,661,874,477/- (more than PKR 8 billion 66 crores), credited the said huge amounts of prize bonds in his aforesaid account, and soon after withdrawing the said huge amounts from his said account on different dates and time during a short period from the date of opening of account i.e. 20-08-2019 to 02-12-20.*
- d) *As per I.O Show Cause Notice was sent to the accused in compliance with section 9 of AML Act-2010 (amended in 2020) containing various questions including two (02) vital questions:-*
- i) *The accused had already possessed the Prize Bonds of different denominations of about PKR 08 billion and 66 crores before opening of aforesaid account i.e. 20-08-2019.*
- ii) *Where did the accused obtain the said huge amounts?*
- e) *During the period from 20-08-2019 to 02-12-2021, the accused had got encashment of prize bonds of aforesaid huge amounts and withdrawn the said huge amounts from the account. Where the said huge amounts were utilized or concealed by the said accused?*
- f) *As per I.O. the accused showed reluctance to submit a reply to show cause notice on the aforesaid questions. This assertion is denied by the defence counsel.*
- g) *As per the Bank Statement i.e. 07.08.2019 to 12.04.2020, bank Account show huge turnover which is not commensurate with the known business.*
- h) *During the investigation the investigation officer obtained information about the following properties and accounts of applicant No.3 and his family members allegedly collected from the proceeds of the alleged crime in terms of Section 8(I) of the Anti-Money Laundering Act 2010 (Amendment 2020):-*

Registration Chassis No.	Registration Date	Name	CNIC	Make/model/year
BK- 3782NFBGD 1830 NR025348	20.04.2022	Syed Muhammad Asif Mustaga	42301-0826785-1	Honda BRV 2022

- i) ***The investigating officer issued a show cause notice to applicant No.3 with the following narration:-***

***“That applicant earned the handsome money which was later on laundered by him through transactions made in his following bank accounts.***

S#	Account Title	Account No.	Bank Name	Branch Name	Agg.Credit Turnover	Agg.Debit Turnover
1	Syed Muhammad Asif Mustafa	0437007000002496	Faysal Bank Ltd	Ibb Denso Hall Karachi	8.661.876.099	8.661.874.477
2	Syed Muhammad Asif Mustafa	10250081006262019	Bank Al-Habib Ltd	Ky-e-Shamsheer Karachi	1.171.168	1.171.166
3	Syed Muhammad Asif Mustafa	02871006693926	Bank Al-Falah Ltd	Bombay Bazar Br. Karachi	6.411.6051	6.411.6051
4	Syed Muhammad Asif Mustafa	0131000444750001	MCB Bank Ltd	Zamzama Branch Karachi	6.140.049	6.378.488
5	Cell.Pk	0131000444750002	MCB Bank Ltd	Zamzama Branch Karachi	00	00
6	Syed Muhammad Asif Mustafa	0390850001	Dubai Islamic	Khadda Market Branch	00	00
7	Cell.Pk	0390850002	Dubai Islamic	Boultan Market Branch Karachi	00	00
8	Syed Muhammad Asif Mustafa	242236344	UBL Bank Ltd	Ky-e-Shamsheer Karachi	2.013.979	2.013.979
9	Cell.Pk	0437007000002536	Faysal Bank Ltd	Ibb Denso Hall Karachi	39.524.000	39.524.000
10	Shah Brothers	0437007000002681	Faysal Bank Ltd	Ibb Denso Hall Karachi	320.000	320.000

- j) ***From the above-mentioned chart of accounts maintained by the applicant, it is alleged that the applicant is indulging in illegal activities of acquiring money by way of illegal means and then depositing the said money/ huge amounts in his above-mentioned accounts just to launder the said illegal money / huge amounts by way of showing the turnover of the said huge amounts in his above-mentioned accounts without any legal business or legal transaction, as such the applicant is indulging in illegal activities of money laundering for a long time i.e. November 2012 to March 2022.***
- k) ***That the above-mentioned chart of account prima facie shows that the applicant acquired money of Rs. 1,171,168/- which was credited and debited during the period from 29.11.2012 to 20.01.2014 in his account mentioned above Sr. No.2. It is further alleged that Applicant failed to provide any documents for utilizing the said money in any legal business or legal transaction, which prima facie show that the alleged amount was acquired from illegal means and then debited for utilizing the same for illegal purpose.***
- l) ***Similarly, the applicant credited and then debited another huge amount of Rs. 8,392,467/- in his above-mentioned two accounts mentioned at Sr. 4 and 8 during the period from September 2017 to September 2018, but he failed to provide any document to prove his such transaction for legal business.***
- m) ***Likewise, the applicant also credited and then debited another huge amount of more than Rs. 8.7 Billion viz Rs. 8,765,748,860/- in his abovementioned accounts at Sr. 1,3,9 and Sr. No. 10, but he failed to provide any document to prove his such transaction for legal business.***
- n) ***That the account statement of the applicant at Sr. No. 1 prima facie shows that he had already accumulated a large number of prize Bonds, which were in his safe custody, and when the Government of Pakistan announced for discontinuation of the prize bonds of Rs. 40,000, 25,000 and 15,000, he got encashed these huge prize bonds by way of crediting their amounts in Pak Rupees 8,661,728,809/- during the period from 21.08.2019 to 02.12.2021. however, he failed to provide and justify for accumulation of the said large numbers of prize bonds and the legal document for purchasing these huge prize bonds. He also failed to disclose his legitimate source of income from his purchase of these huge prize bonds, which he got credited in his said account by way of encashment of prize bonds and then debited the said huge amounts from his said account.***
- o) ***In his above-mentioned accounts, prima facie he has disclosed the following address:-***

- a. House No. NP-12/20, Goldsmith Lane, Sarafa Bazar Mithadar Karachi.
- b. Shop# 6, Education Office, Opposite Plastic Market, Boultan Market Karachi.
- c. Flat No. OT-8/89, 4<sup>th</sup> Floor, Fatima Manzil, Mohalla Khagzi Bazar, Methadar Karachi.
- d. H. Room No. 11, 2<sup>nd</sup> Floor, Palmera Building, Ram Part Row Road, Memon Masjid Bombay Bazar Karachi.
- e. Shop No.1, Plot No. 18-C, Stadium Lane-4, Near Red Apple Phase V, Khadda Market DHA Karachi.
- f. Shop# 39, Rubi Centre, Opposite Post Office, Boultan Market Karachi.
- p) The investigating officer directed the applicants to provide the ownership documents of the above-mentioned properties, however, no details have been given as per the investigating officer
- q) The allegations against applicant No.1 is that she declared herself initially as proprietor of M/s Shifa Enterprises which purportedly dealt in garments. Later, she updated her bank account profile (KYC) as the proprietor of M/s Meezan Beauty Parlor which is wrong/mis-declaration as the transactions in her bank account are not commensurate with the declared profile. The above transactions establish that Syeda sheir Bano is associated with Syed Muhammad Asif Mustafa in the illegal trading of prize bonds, just to disguise ill-gotten money (POC).
- r) During interrogation, applicant No.1 disclosed that she is doing the job of Security Guard as 3<sup>rd</sup> party employee on the penal of the State Bank of Pakistan.
- s) As per the applicant, she was registered on 11 Jul 2019 in FBR. She further claimed winning prize bonds at the State Bank of Pakistan deducted withholding tax as withholding Agent and the same deposited into the government treasury. The same was claimed in the annual income returns of the respective financial year.
- t) The allegation against applicant No.2 is that she is involved in the unauthorized sale/purchase of winning prize bonds of multiple series with the same numbers from illegal traders of prize bonds, just to legalize ill-gotten money in collusion with applicants No. 1 and 3.
- u) Applicant No.1 in interrogation disclosed that she served as a Bankers Service Officer in EFU life insurance thereafter she was appointed in HBL Call Centre where she served about 1.5 years. Thereafter she joined Banker Service Officer (BSO) at Jubilee Insurance Company Limited.
- v) She claims that she was registered on 11 JAN 2019 in FBR, She claimed winning prize bonds at the State Bank of Pakistan which deducted withholding tax as a withholding Agent, and the same was deposited into the government treasury. The same was claimed in the following annual income returns of the respective financial year by applicant No.2.-

S#	Account # & Title	Bank/Branch	Agg. Credit turnover	Agg. Debit turnover
1	A/c 1007356593/title Meezan Beauty Parlor	Bank Al-Falah Steel Market Karachi	163.000	163.000
2	A/c 1007408506/title Noshaba	Bank Al-Falah Steel Market Karachi	157.688	157.688
3	A/c 00137900612903/title Noshaba	Habib Bank Ltd. Lharadar Karachi	179.485	175.517
4	A/c 002579004141003-title Noshaba	Habib Bank Ltd. New Challi	40.220.373	40.218.917
5	A/c 1044-0981-01410001-0-title Noshaba	Bank Al- Habib Ltd Kharadar Karachi	936.500	935.686

- w) *The State Bank vide letter dated 06.07.2022 confirmed that the applicant was not authorized as an Agent by the State Bank of Pakistan BSC branch Karachi.*
- x) *The investigating officer informed that the interim charge sheet was submitted on 06.07.2022 and the case is still under investigation for various reasons.*
- y) *Prima facie the allegations leveled in the crime report that the applicants remained instrumental in the commission of alleged offenses punishable U/s 420/489-G/34 PPC r/w 3 / 4 AML Act, 2010 (amended 2020)*

7. Primarily, money laundering is the process of hiding the source of money obtained from illegal sources and converting it to a clean source, thereby avoiding prosecution, conviction, and confiscation of criminal funds. It is an illegal exercise that converts black money into white money.

8. In principle while granting pre-arrest bail, the Court can consider the merits of the case in addition to the element of malafide / ulterior motives which has to be adjudged in the light of law laid down by the Supreme Court in the case of *Meeran Bux vs. Th State (PLD 1989 SC 347)* and *Syed Muhammad Firdous vs The State (2005 SCMR 784)*, however, while seeking pre-arrest bail, it is the duty of the accused to establish and prove specific malafide on the part of the Investigating Agency or the complainant. Bail before arrest is an extraordinary relief that cannot be granted unless the person seeking it satisfies conditions specified in law and establishes the existence of reasonable grounds leading to believe that he/she is not guilty of the offense alleged against him/her and there are sufficient grounds warranting further inquiry.

9. At the stage of bail as discussed in paragraph No.5 further discussion is not necessary but as for as the material evidence is concerned the same prima facie connects the applicants with the alleged charges of conversion of illegal money into assets by way of money laundering, as the applicants have failed to substantiate their claim of alleged business transaction through a valid license for which the State Bank of Pakistan has denied to have issued such a license to the applicants to carry out the business transaction of price bonds, which prime facie is the ill-gotten gain which needs to be taken care of by the learned trial after recording the evidence and at this stage, no premium could be given to the applicants to accumulate a huge amount of money and its conversion to their personal use without lawful justification, thus no case for pre-arrest bail is made out.

10. In view of the above, prima facie, ample material/evidence is available with the prosecution to connect the applicants/accused with the commission of the offense. No malafide has been attributed to the complainant or investigation officer. In the mentioned circumstances, I am of the tentative view that the applicants have not been able to make out a case for grant of relief under Section 498 Cr. PC. Thus, their bail application is dismissed and interim pre-arrest bail already granted to them by this Court vide order dated 3.8.2022 is hereby recalled.

11. Needless to mention here that observations made hereinabove are tentative and the trial Court while deciding the case on merits shall not be influenced by said observations.

12. Bail application stand disposed of.

JUDGE