

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

(1)

Criminal Bail Application No.875 of 2024

Fahad Altaf S/o Altaf Hussain
Versus
The State

(2)

Criminal Bail Application No.876 of 2024

Muhammad Zeshan Qureshi S/o Muhammad Jamil Qureshi
Versus
The State

Date of Hearing: 23.05.2024
Date of short order: 23.05.2024
Date of Reasons: 27.05.2024

Syed Ghulam Shabbir Shah, Advocate for the applicants a/w
M/s. Irtafa Ur Rehman, Khuda Dino Sangi and Mukesh Kumar
Talreja, Advocates.

Syed Daanish Ghazi, Advocate for the complainant.

Pir Riaz Muhammad Shah, D.A.G.

Inspector Umair Shah, FIA, CBC, Karachi.

M/s. Kashif Dahraj and Imran Yousuf, Law Officers HBL.

.....

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Imran Khan on behalf of Consulate General Japan at Karachi lodged a complaint with the FIA in respect of opening of two accounts in the name of Mrs. Fumika Kumagae, wife of the diplomat, wherein offence, in terms of the accusations, found triable within “offences in respect of Banks (Special Courts) Ordinance, 1984” [the Ordinance, 1984] and the Federal Investigations Agency, 1974 read with Pakistan Penal Code [PPC] and Criminal Procedure Code [Cr.P.C]. It was transpired to it (Consulate of Japan, hereinafter referred as Mission) that ex-employees of Mission have created two accounts at Tower Branch of Habib Bank Limited, which were claimed to be

fake and without knowledge of Mrs. Fumika Kumagae and are identified as under:-

A. Account Title: Mrs. Fumika Kumagae
Account No.: 2525-70012063-10
Currency: United States Dollars
Branch: Tower Branch
Bank: Habib Bank Limited

B. Account Title: Mrs. Fumika Kumagae
Account No.: 2525-70012102-03
Currency: Pakistani Rupee
Branch: Tower Branch
Bank: Habib Bank Limited

2. Mrs. Fumika Kumagae was the wife of the diplomat Takahiro Kumagae. It is disclosed in the complaint that the purpose of opening fake accounts is to siphon off the official accounts of the Mission through their (Mission's) "authorized representatives" who were solely responsible for maintaining the official accounts, as not disputed.

3. Mr. Ubaid Anwar claimed to have used his position at the Mission to obtain documents, perhaps from the office of the Consulate General, which documents were utilized to open aforesaid accounts, now being claimed as fake and fictitious. It is claimed by the Mission in the complaint that it is likelihood that the accused persons have even used counterfeit or bogus documents for the purposes of establishing or opening the two accounts. It is stated in the complaint that after opening the accounts, the amounts from the official accounts of the Mission were being siphoned off and deposited into these accounts from where the amount was withdrawn. The amount was calculated to be US\$ 1,21,210/-. The complainant has accused Mr. Ubaid Anwar (Mission's employee) that without asking either Consul or Mrs. Fumika Kumagae, the cheques were used/ deposited and the

money was being withdrawn from the official account and deposited in the subject accounts. The accusation in the complaint was not only siphoning off the account but also tempering of various invoices including K-electric bills, customs documents for clearance of goods. It is thus reported that Mr. Ubaid Anwar without any authorization or approval of the Consul General had made himself as a signatory on the official US\$ and Pak Rupee account of the Mission and illegally used the same to convert US\$ to Pak Rupee at unofficial rates.

4. The investigation was carried out and an interim challan was submitted perhaps on 18.04.2024. The interim challan disclosed that the two applicants/accused Muhammad Zeshan, Customer Service Officer and Fahad Altaf, Branch Manager found involved in the aforesaid scam. They stated to have facilitated accused Ubaid Anwar for opening of the aforesaid fake/fictitious accounts in the name of diplomat's wife Mrs. Fumika Kumagae. It is stated in the interim challan that accused Muhammad Zeeshan handed over the account opening form to accused Ubaid Anwar for signatures of Mrs. Fumika Kumagae. It is also stated in the interim challan that accused Fahad Altaf had admitted that he has made fake and forged signatures of Mrs. Fumika Kumagae upon account opening form and handed over to the accused Zeeshan, who processed the opening of the account. Ubaid Anwar claimed to have furnished copies of the letter dated 12.07.2023 mentioning that Mrs. Fumika Kumagae is a bonafide employee of this mission. It was duly stamped (original seen) and signed by the accused Muhammad Zeeshan. Mrs. Fumika Kumagae shown to have disowned such letter. The interim challan/report further reveals that the two accused, who are employees of the bank i.e, Fahad Altaf and

Muhammad Zeeshan are not found beneficiaries of the crime proceeds with a rider that if any progress is made with regard to their involvement, it may be intimated to the court. However, the involvement of the employees of the bank was only to the extent of account opening.

5. At the time of submission of interim challan, a partial amount out of the embezzled amount was recovered, whereas, the balance is yet to be recovered.

6. On the basis of the facts as disclosed in the FIR and interim challan and other documents filed by applicants and I.O, we have heard learned counsel and perused material available on record.

7. Mr. Ghulam Shabbir Shah, learned counsel for applicants/accused submits that there is no iota of evidence in support of the accusation made in the complaint which could even remotely involve the two applicants/accused who have been working with the bank. They are not shown to have any beneficial interest at all of the crime proceeds nor the specific role is pleaded as to the offence and the employees are being humiliated at the hands of the FIA. The relationship shown to have been the way it was and never objected rather requested for. Nine official accounts of the mission are being operated through the same authorized representatives and not by the consul general himself, which too not objected by Mission.

8. Pir Riaz Muhammad Shah, learned D.A.G. as well as Syed Daanish Ghazi, learned counsel for complainant have opposed the bail application on the count that it is an offence covered by special law and the normal principles enshrined would not come in

the way. Learned counsel have relied upon Section-5 Sub-section-6 of the Ordinance, 1984 and submitted that the provisions in terms of Section-12 of the Ordinance, 1984 shall have effect notwithstanding anything contained any other law for the time being in force. Counsel have relied upon the case of Chaudhary Shujat Hussain¹.

FINDINGS

9. As we could see, the primary offence, apart from account opening of Mrs. Fumika Kumagae, is an alleged attempt to syphon off the official accounts being operated by Mr. Selwyn Oswald Victor having CNIC No.42301-8724508-9 and Mr. Ubaid Anwar having CNIC No.42201-7885538-9. This authorization was shown to have been done by a letter of 31.03.2021. These two individuals, being employee of the mission, were nominated to deal with the bank matters. This was followed by yet another letter of 07.06.2022 to Habib Bank Limited which disclosed the specimen signatures of the Consul General, Deputy Consul General and the Assistant to Administration. These persons were then authorized on behalf of Mission.

10. Previously the mission was requesting the bank for the removal of some of the services/SOPs, being followed by Bank, in respect of the official accounts of the Mission, such as call back confirmation and cheque presentation without stamp etc. On 13.03.2024 the mission informed the bank that in respect of the nine official accounts the two new authorized persons have been nominated and previous signatories were to be removed. They have specified in the letter that from that day onward they have two

¹ 1995 SCMR 1249 [Chaudhary Shujat Hussain v. the State].

signatories with the title of the Consulate general and Deputy Consulate General who could operate the accounts.

11. As we understood, the primary offence is the syphoning off the amount from the official accounts as accounts of Mrs. Fumika Kumagae were only shown to have opened to transfer the money from above referred official accounts, however, the complainant's counsel and learned D.A.G. had no answer that the authorized representatives of the mission were entitled to withdraw cash amount as well from the official accounts also and hence there was no need to open the two disputed accounts if the official accounts were to be embezzled. Since the biometric issue was not a condition precedent as the officials of the mission were not the citizens of Pakistan, therefore, this exemption was provided and the authorized representatives were allowed to maintain and operate the accounts.

12. On 12.07.2023 the Mission shown to have issued a letter that Mrs. Fumika Kumagae, Consul, Consulate General of Japan holding passport No.RA3003678 is a bonafide employee of this mission. She arrived in Karachi, Pakistan to assume her assignment for three years. With the said letter an account opening form duly signed, claimed to have been forwarded to Bank through authorized representative, which for official accounts shown to be a normal process.

13. Surprisingly, the audit report of the bank itself shows that out of the alleged embezzled amount an amount of USD 10,000/- was also remitted to Japan from Mrs. Fumika Kumagae's USD account in the account of an individual having Japanese origin specified as sister that is sister of Mrs. Fumika Kumagae. This

shows that Mrs. Fumika Kumagae herself could also be a beneficiary along with her sister, as the so-called fake accounts were used for the remittance of the amount to her sister. Similarly, Rs.1.3 million (Pak Rupes) were also transferred from Mrs. Fumika Kumagae's account back to Mission's account and no complaints were found. Officials of Mission have not shown to object any unauthorized debit/credit entries. Nothing came on record as objection at relevant time about two accounts of Mrs. Fumika Kumagae and debit/credit entries of an official account of Mission.

14. There is no doubt a departure from normal process is enshrined under Section-5(6) of the Ordinance, 1984 that is offences in respect of Bank (Special Courts) Ordinance, 1984 and Section-497 Cr.P.C but that alone will not subside the constitutional mandate.

15. Section-5 Sub-section-6 of the Ordinance, 1984 does not restrict the court absolutely from not extending the accused person/applicant on bail. It restricts the court from not extending the accused/ applicant on bail if it appears to the court that there are reasonable grounds for believing that he has been guilty of scheduled offence. Such does not seem to be a case here.

16. No complaint is lodged by Mrs. Fumika Kumagae, even FIR was filed by Mission. Statement of Mrs. Fumika Kumagae was also not obtained.

17. The entire case of the present applicants/accused is based on the documentary evidence which are either with the complainant or with the I.O and hence there is no possibility of

tempering of any document required by the prosecution^{2,3}. Reliance may also be made in the case of Abdul Zaheer⁴ and an unreported order⁵, wherein an accused is not shown to be the beneficiary of the proceeds of crime. There are thus material questions required to be answered as highlighted in the order above which requires trial and hence a case of further inquiry.

18. We are of the view that it is a case of further enquiry as far as the present applicants/accused are concerned, as applicants' case/role is totally different than those who were employees of the mission and were authorized to use the official accounts with modified SOPs.

19. These are the reasons for our short order dated 23.05.2024 whereby the applicants/accused were granted bail.

20. Needless to mention here that the observations made hereinabove are tentative in nature would not influence the trial Court while deciding the case of applicants/accused on merits.

Dated: 27.05.2024

JUDGE

JUDGE

Ayaz Gul

² 1996 SCMR 1132 [Saeed Ahmed v. The State].

³ PLD 2004 Karachi 617 [Syed Amir Ahmed Hashmi v. The State].

⁴ 2022 MLD 577 [Abdul Zaheer v. The State].

⁵ Unreported Order passed in Cr.B.A No.842/2011 [Aftab Ahmed Lakho v. the State].