ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.646 of 2024

Date	Order with signature of Judge

For hearing of bail application

Date of hearing and Order:-12.7.2024

Mr. Sajjad Gul Khatri advocate for the applicant / accused
Mr. Muhammad Ahmed, Assistant Attorney General alongwith Inspector Arsalan Qazi, ACC, FIA

O R D E R

Adnan-ul-Karim Memon J:- Through the instant bail application, the applicant Talha Samoo has approached this Court for a grant of post-arrest bail in terms of Section 497 Cr. P.C., in FIR No. 08/2023 registered for the offenses under Section 406/419/420/468/471/34 PPC, of FIA ACC Karachi. The earlier bail plea of the applicant has been rejected by the trial court vide order dated 10.2.2024 on the premise that the applicant along with accomplices sold out the Government accommodation situated at Plot No E-13/6-B, Jahangir East, PWD, Government of Pakistan worth a million of Rupees, thus not entitled to bail.

2. The accusation against the applicant is that he in connivance with his accomplices knowingly, fraudulently, and dishonestly induced the complainant and other witnesses to sell out the Government accommodation situated at Plot No E-13/6-B, Jahangir East, PWD, Government of Pakistan, but neither the accused persons has fulfilled the commitment nor returned their amount. The investigating officer after inquiry submitted a Final charge sheet to the court of law against the applicant and others on the premise that they have committed the offenses punishable under sections 406/419/420/468/471/34/109 PPC r/w section 3/4 AML Act, 2010.

3. The learned counsel for the applicant/accused has mainly contended that the applicant is innocent and has falsely been implicated in this case by the police at the behest of the complainant who has now recoiled from the statament.; that there is no direct evidence in the case and in absence thereof the case of the applicant is fit for further enquiry; that sections under which the present applicant has been charged are not applicable as Section 406 P.P.C. is concerned with misappropriation of the property entrusted with and there is no evidence on record that the accused was ever entrusted with property by the complaint, and section 420 P.P.C., in absence of handing over any property to accused, is also not applicable, while and section 3/4 AML Act, 2010 does not attract as there is no such money laundering transaction in the matter which may attract such provision as no purported crime proceeding has been brought on record, even otherwise sections 406, 468 PPC and section 3/4 AML Act, 2010 do not fall under the prohibitory clause of Section 497 Cr.P.C.; as such, the applicant is liable to be released on bail coupled with the fact that he is behind the bars since his arrest. The learned counsel pointed out that co-accused Shahid Hussain, Kamal, and Mst. Shahana have

already been granted post and pre-arrest bail by the trial Court vide orders dated 19.09.2022 and 21.05.2024, as such a rule of consistency is applicable in this case. He has further pointed out that complainant Effat Asisf has already recorded her no objection about the grant of bail to the applicant before the trial Court, however the same has not been accepted. He also emphasized that under the Accommodation Allocation Rules 2022, the said accommodation can be allotted to the reserving allottees however it is the market practice that as and when the holder of possession leaves the same accommodation is handed over to the official who obtains allotment order from the competent authority as such private person has nothing to do of such transfer of accommodation and the question of obtaining amount from the private person is concerned the complainant has come forward and raised her no objection as she has no grievance against the applicant however it is the FIA who is insisting for the prosecution of the applicant without evidence and has also insisted for inclusion of sections of Money Laundering though the record does not suggest that such transaction has taken place, however, the FIA is bent upon victimize the applicant in private affairs; that the purported agreements have been managed. He prayed for allowing the bail application.

4. Learned Assistant Attorney General for Pakistan while supporting the order of the learned trial court vehemently opposed the bail application and argued that the applicant/accused is involved in the heinous crime of money laundering as he has been assigned a specific role in the commission of the offense and the material collected against him connects him to the alleged offense, hence he is not entitled to concession of bail. He has further argued that since the offense under Sections 3 & 4 of the Act is cognizable and non-bailable and punishable for up to 10 years, the same falls within the prohibitory clause of Section 497 Cr.P.C. It is also argued that if the applicant/accused is granted bail, at this stage, there is apprehension that he might use his influence to tamper with the prosecution evidence. The Learned Assistant Attorney General attempted to give a history of the case and submitted that complainant Effat Asif and Muhammad Akram lodged complaints against the applicant with F.I.A with the narration that the accused received 03 Million (1.5 Million each) by plying fraud by pretending to provide plot in the PWD Federal Quarters. The complainant further stated in the complaint that co-accused Shahid and Kamal introduced the applicant for the sale of Plot No. E-13/6-B, Jahangir East with the assertion that subject plots belong to the applicant and the deal was executed for Rs 1500,000/-. The complainant paid Rs. 2 Lacs in advance and a balance amount of Rs 13 lac was also paid to the applicant. Despite the lapse of several months, the plot was not handed over to the complainant. Similarly, in another complaint, complainant Muhammad Akram alleged that he had a deal with the applicant to purchase of plot at the Federal Quarters of PWD and handed over Rs. 15 Lacs cash to the applicant. He further alleged that after payment of the full amount the applicant did not hand over the occupation of the plot to him. Learned Assistant Attorney General has added that during the inquiry, the statement of PWs was recorded who disclosed the ordeal of the complainant and introduced the same story as narrated by the complainant. He further argued that the applicant knew that the said plots/quarters belonged to the Federal Government but almost all of the locality was involved in the sale/purchase of the said plots. He argued that after the finalization of the inquiry, it was revealed that accused

Shahid, Kamal, and Shahana Naz in active connivance with the main accused Talha Samoo hoodwinked the general public into selling the government property/quarters to them by taking huge amount. He added that the applicant has fraudulently grabbed an amount from poor people and has reportedly invested in the purchase of properties as a result of proceeds of crime. He argued that sufficient oral and documentary/evidence is available to associate the above-mentioned accused with the commission of the offense. He prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. Prima facie, the allegations are well explained by the FIA in the F.I.R to the extent that the applicant in connivance with his accomplices attempted to transfer the government accommodation to the private person by receiving the cash cheques but failed to deliver the possession of the subject government accommodation to the person from whom he received such amount; and, now they want their amount back for that one complainant Effat has come forward and raised her no objection by filing her affidavit to the extent of bail of the applicant which factum has already been disclosed by the trial Court vide order dated 10.02.2024. Prima facie the last assertion is not tenable in law for the reason that invoking the Provisions of PPC is not intended to be used for recovery of an alleged amount through bail proceedings as it is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under the PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing, its absence in the conduct of an accused to a degree that constitutes dishonesty by him within the meaning of the aforesaid sections of P.P.C. Besides, the complainant should be aware that government accommodation cannot be put on sale and purchase, however, the complainant party attempted to enter into such transaction without lawful justification and now they raising hue and cry, however, this aspect could be seen by the trial Court after recording the evidence.

7. It appears that after lodging the F.I.R. the investigation was conducted and F.I.A submitted the challan against the applicant/ accused, under sections 406/419/420/468/471/34/109 PPC r/w section 3/4 of the AML Act, 2010, out of them, only one offense under Section 468 P.P.C. is non-bailable, however, the same is non-cognizable and the same also does not fall within the prohibitory clause of section 497 Cr. P.C. so far as section 406 PPC is concerned the same is punishable upto seven years and does not fall within the prohibitory clause of section 497 Cr. P.C. now coming to the applicability of section 406 PPC.

8. After hearing the arguments of both sides and perusing the record carefully, it has become transparent that the matter in hand, ex-facie, seems to be Civil, as it is evident from the contents of the F.I.R that there was a civil transaction between the parties and

both the parties agreed to the sale and purchase some property in lieu of certain amount which was purportedly received by the applicant and other persons, however, this issue primarily has to be decided by the learned trial Court as well as about the application of section 406 of P.P.C. according to the facts and circumstances of the case after recording evidence. The offence of criminal breach of trust as defined under S.405, P.P.C, punishable under S.406, P.P.C. was to be committed if the property (money) was given on trust and the same property was not returned. If a person gave money to others for investment in the business and an equivalent amount of money along with profit was to be returned by the latter then prima-facie, such business transaction was not to attract the provision of Sections 405 & 406 of P.P.C. Primarily such transactions was not of entrustment of property, but simply one of the investments of the property. The record further reflects that no date, time, or place of criminal intimidation by applicant was given in F.I.R. No relevant details of criminal intimidation were brought on record of the investigation. It is a well-settled law that no one could be prosecuted based on vague and unspecified allegations. Prima facie, the F.I.A had tried to convert a civil and business dispute into a criminal case; and the learned trial Court has to evaluate the same judiciously, independently.

9. The intent behind the grant of bail is to safeguard the innocent person from the highhandedness of police/ complainant, if any; and, very strong and exceptional grounds would be required to curtail the liberty of the accused charged, before completion of the trial, which otherwise is a precious right guaranteed under the Constitution of the country.

10. Besides the above in the case of *Tariq Bashir V. The State* (**PLD 1995 SC 34**) the Supreme Court has taken notice of stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offenses punishable with imprisonment of fewer than 10 years and held that “grant of bail in such offenses is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded.” While elaborating exceptions, albeit it was mentioned that if there is a danger of the offense being repeated, if, the accused is released on bail, then the grant of bail may be refused but it is further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not to be based on surmises and artificial or weak premise. Even otherwise to ensure that the accused may not repeat the same offense, if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offense would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such ground should not be an absolute bar in the way of grant of bail. It may be noted that there is a sky-high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration. It is a settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in a particular category of offenses without placing any prohibition on such discretion.

11. In such circumstances, when the offenses do not fall within the prohibition contained in Section 497(1) Cr. P.C and punishment of the offense is less than 10 years, the Supreme Court in the case of *Iftikhar Ahmed v The State* **PLD 2021 SC 799** has given loud and clear directions to all courts in the country that granting bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule, and refusal shall be an exception, then, the subordinate Courts should follow this principle in its letter and spirit because principles of law enunciated by this Court under Article 203 of the Constitution of the Islamic Republic of Pakistan, 1973 is binding on all subordinate Courts. My view is supported by the decision rendered by the Supreme Court in the case of *The State v. Syed Qaim Ali Shah* ***(1992 SCMR 2192)*** and the famous case of *Khan Asfandyar Wali and others v. Federation of Pakistan* ***(PLD 2001 SC 607).***

12. As regards the contention of the learned Assistant Attorney General that the offense under the AML Act is non-bailable and punishable for up to 10 years as such the same falls within the prohibitory clause of Section 497 Cr.P.C., Section 3 of the Act prescribes the offense of money laundering, while Section 4 provides the punishment for the commission of such offense, which reads as under:-

> ***4. Punishment for money laundering.— (1) Whoever commits the offense of money laundering shall be punished with rigorous imprisonment for a term which shall not be less than one year but may extend up to ten years and shall also be liable to a fine which may extend up to twenty-five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value. (2) The fine under sub-section (1) may extend up to one hundred million rupees in the case of a legal person. Any director, officer, or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).***

13. The aforesaid Section provides the punishment for a term, which may extend to ten years, the word "may" is used in the provision, which provides discretion to the courts for punishing the accused found guilty after a complete trial. It is settled by now that while deciding a bail application the lesser punishment provided in the law is to be considered. In this regard, reliance can be placed on the case of *Jamal-ud-Din alias Zubair Khan v. The State* [**2012 SCMR 573**] wherein the Supreme Court of Pakistan, inter alia, has held that:-

> ***"4. ……Needless to say the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."***

14. Insofar as the contention of the learned Assistant Attorney General that the applicant/accused is involved in another criminal case is concerned, the Supreme Court of Pakistan in the case of *Jamal Uddin* [supra] has also held as follows:-

> **"5. The argument that the petitioner has been involved in two other cases of similar nature would not come in the way of grant of the petition so long as there is nothing on the record to show that he has been convicted in any one of them. …."**

15. Besides the above, it is also well-settled law that mere pendency of criminal cases against any of the accused does not ipso-facto disentitle him for grant of bail. Reliance in this regard has been placed on the case of *Tarique and others v. The State* [**2018 MLD 745**].

16. The record shows that the applicant/accused is not a previous convict nor a hardened criminal and has been in continuous custody since his arrest and is no longer required for any investigation. Furthermore, the record also reflects that the conclusion of the trial is not in sight. Besides, in the present case, it appears that the entire case is based upon documentary evidence, which too is already with the Prosecution as such in the event the applicant/accused is released on bail no chance of tampering with evidence will arise. It is also a well-settled law that bail cannot be withheld as punishment.

17. In view of the peculiar facts and circumstances of the case, as well as the dictum laid down by the Supreme Court of Pakistan, I do not find any justification to keep the applicant / accused behind bars for an indefinite period pending the determination of his guilt.

18. I expect the Courts below to adhere to these binding principles in the future and not to act mechanically in the matter of granting or refusal of bail because the liberty of citizens is involved in such matters, therefore, the same should not be decided in a vacuum and without proper judicial approach.

19. In view of the facts and circumstances narrated above, I am of the considered view that the learned trial Court has erred in appreciation of law on the subject while rejecting the post-arrest bail of the applicant, hence, the same is set at naught, as a consequent I am of the considered view that the case of the applicant is of further inquiry fully covered under section 497(2) Cr.PC, entitling for the concession of post-arrest bail.\

20. For the above reasons, this bail application is allowed. The applicant is enlarged on post-arrest bail in FIR No. 08/2023 registered for the offenses under Section 406/419/420/468/471/34 PPC, r/w section 3/4 of the AML Act, 2010 of FIA ACC Karachi, subject to furnishing his solvent surety in the sum of Rs.100, 000 (Rupees one hundred thousand) and P.R bond in the like amount to the satisfaction of the learned trial Court.

21. Before parting with this order, it is clarified that the findings given in this order are tentative and it will not affect the merits of the case in any manner whatsoever.

JUDGE

Shafi