

IN THE HIGH COURT OF SINDH AT KARACHI

*Crl. Bail Application No.1387 of 2024*

Present:

Justice Kausar Sultana Hussain  
Justice Jawad Akbar Sarwana

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. *For order on MA No.8428/2024*
2. *For order on MA No.8429/2024*
3. *For hearing of bail application.*

M/s. Shaikh Jawaid Mir, Syed Zulfiqar Hyder, Ms. Samreen Ehtesham, Sheharyar Ibrahim Soho and Aga Atta Muhammad, Advocates for the applicant

Mr. Kazi Abdul Hameed Siddiqui, DAG for the State.

Mr. Salman Hassan s/o Syed Basher Ul Hassan ("the Complainant") and Syed Basher Ul Hassan, both son and father, respectively, present in person.

Inspector Ibrahim Khan, I.O., FIA, CBC, Karachi, Enquiry No.163/2023 in FIR No.12/2024

Date of hearing: 02.07.2024

Date of short order: 02.07.2024

Date of reasons  
of short order: 08.07.2024

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**ORDER**

1. By this order, we intend to dispose of the aforesaid Criminal Bail Application filed by Mossin Wali s/o Shahinshah Wali (hereinafter referred to as "the applicant/accused") which arises out of FIR No.12/2024 lodged by Salman Hassan s/o Syed Basher Ul Hassan ("the Complainant") at FIA, CBC, Karachi under Sections 409, 419, 420, 468, 471, and 109 PPC.

2. The applicant/accused has sought post-arrest bail from this Court after the Presiding Officer of the Special Court (under the Offences in Respect of Banks (Special Courts) Ordinance, 1984), Sindh at Karachi in Criminal Case No.19/2024 (“the trial court”) vide impugned order dated 15.06.2024 dismissed his bail application under Section 497 PPC. He is now seeking release from custody through this post-arrest bail application after the learned trial court dismissed his first bail application vide the impugned order dated 15.06.2024.
3. The background of the case is that the Complainant, Salman Hassan, has alleged that the applicant/accused (formerly the Branch Manager of HBL Khayaban -e- Hafiz Branch, Karachi), allegedly breached his fiduciary duty and trust in the capacity of a bank officer owed to the complainant’s father, committed fraud, cheated the complainant’s father, and unlawfully and illegally in violation of the several provisions of PPC cited in the Criminal Complaint, misappropriated, diverted and siphoned off funds of Rs.21,091,201/- (Rupees Twenty One Million) approx., for his personal gain delivered for the purpose of investment with the Bank, from time to time, by the complainant’s father, a senior citizen, including, inter alia, generating/issuing forged/fake Treasury Deposit Receipts (“TDRs”) which the applicant/accused handed to the complainant’s father, passing them of as genuine. On 23.05.2024, an FIR was lodged against the applicant/accused for the offences allegedly committed between 2018 and 2023, and he was arrested on the same date. As of 15.06.2024, an inquiry has been commenced against the applicant/accused, and the

matter was still awaiting submission of the final charge sheet when we heard this cr. bail application on 02.07.2024.

4. According to the learned Counsel for the applicant/accused, FIR No.12/2024 has no legs to stand, and the I.O. is biased. The applicant/accused resigned from HBL in 2020; hence, the trial court lacks jurisdiction under the Special Courts (Offences in Banks) Ordinance, 1984 as he was not an officer of the bank when the FIR was lodged against him. The applicant/accused enjoys an unblemished reputation and record, having served in Faysal Bank, Bank Alfalah and HBL Bank Ltd., and is entitled to bail. Further, as, when and if bail is granted, there is no probability of him absconding or tampering with the prosecution witness. The applicant/accused is a family man; he has been denied a fair trial, he is a sick and infirm man, and the complaint is malafide on the part of the complainant to settle certain scores as detailed in the bail application.
5. The learned DAG submits that there is substantial prima facie evidence against the accused. No case for malafide or further inquiry is made out. Hence, the bail application has been rejected on cogent grounds.
6. We have heard the learned Counsels for the applicants/accused, the DAG, as well as the I.O. and perused the record.
7. The learned Presiding Officer of the trial court dismissed the bail application filed by the applicant/accused on the grounds, inter alia, that "there is a high risk that if released on bail, he [the applicant/accused] could tamper with evidence, influence

witnesses or otherwise obstruct, the investigation. . .[and] he could interfere with ongoing legal process”. Further, “the accused on bail could provide him the opportunity to continue similar fraudulent activities, posing a danger to the community and potential victims. . .could undermine public confidence in the judicial system [and] denying bail serves the public interest by ensuring that justice is served and deterring similar crimes in the future.” Finally, “in the present case the I.O. has collected sufficient evidence. . .[and] no case for grant of bail has been made out, and the bail application in hand merits no consideration which is hereby dismissed.”

8. The applicant/accused has been charged with offences which are bailable. We have perused the impugned Order of the learned Presiding Officer and have not found any reasons for the position (conclusion) he took to dismiss the bail application. According to the I.O., he has secured the bank statements of the applicant/accused and recorded statements of the witnesses.<sup>1</sup> As per the I.O., the allegation against the applicant/accused turns on electronic documents that form part of the banking system. Further, the forged TDRs are already in the possession of the I.O., and according to him, they are part of the crime property. Finally, the preponderance of evidence being in documentary shape also merits consideration.<sup>2</sup> In the above circumstances, we are unable to understand how the applicant/accused, if released, could tamper with evidence, influence witnesses or otherwise obstruct the investigation.

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<sup>1</sup> Noman Khaliq v. The State and Another, 2023 SCMR 2122, 2125 (C)

<sup>2</sup> Zafar Nawaz v. The State and Another, 2023 SCMR 1977

9. The learned Presiding Officer also concluded that granting bail to the accused could undermine public confidence and serve as a deterrence of similar crimes in the future. When we asked the I.O. if the pending enquiry and/or the FIR is a reportable item to the State Bank of Pakistan (“Central Bank” / “SBP”), he responded in the affirmative and submitted that until the complaint stands decided by a Court of law, the criminal proceedings are continued to be reported to the SBP and are available on their intranet accessed by other banks. This suggests that Financial Institutions doing banking business in Pakistan have access to the applicant/accused data and may or may not make decisions relating to his hiring based on such information. Additionally, as and when the applicant/accused applies for a job, his former employers, who have been part of the I.O’s inquiry, may also inform the applicant/accused future employer about this criminal complaint. Given this backdrop, we are not impressed with the conclusion reached by the learned Presiding Officer that he could be a re-offender or pose a danger to other financial institutions and the community at large. We are satisfied that the likelihood of a background check of the applicant/accused by any future employer may raise questions for the applicant/accused to address in his future job interview and is sufficient deterrence to mitigate the risk of the applicant/accused reoffending. Further, in the given circumstances, it would be unfair to keep the applicant/accused incarcerated and to deny him the opportunity to rehabilitate and to reintegrate into society as a law-abiding citizen.
10. The evidence gathered by the I.O. is yet to be put to the scrutiny of trial. No record has been shown to us confirming

that the case stands closed without a trial. Further, at this point, the applicant/accused (albeit in custody) has been participating in the inquiry. An interim charge has been submitted, and the trial will proceed after the final charge sheet which is currently awaited is submitted to the trial court. The evidence in support of the prosecution case has yet to commence. The trial will be expected to produce evidence of a conclusive nature to prove the ingredients of the criminal case on the part of the applicant/accused. As such, the matter calls for further inquiry. No one should be condemned unheard (read: incarcerated) in the peculiar facts and circumstances of the case discussed hereinabove.

11. Additionally, the likelihood of the applicant/accused absconding is remote. Additionally, neither the crime is of a nature which may involve the evidence being tampered with, nor is there any likelihood of the offence being repeated. Hence, the case also requires further inquiry as contemplated under Section 497(2) Cr.P.C., and the applicant/accused is entitled to the concession of bail. Even otherwise, the applicant/accused is to be afforded the right of the benefit of the doubt, which can be extended at the bail stage.<sup>3</sup>
12. In view of the facts and circumstances discussed herein above, a case is made out for the confirmation of a post-arrest bail application. Consequently, the applicant/accused, Mossin Wali, is granted post-arrest bail and shall be released forthwith subject to furnishing a solvent surety in the sum of PKRs.10,000,000 (Rupees One Caror

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<sup>3</sup> *Ihtisham Ali Cheema v. The State*, 2022 SCMR 624

only) and with a P.R. bond in the like amount to the satisfaction of the Nazir of this Court.

13. The applicant/accused is directed to cooperate fully with the I.O. of the case. If the IO makes a complaint of non-cooperation by the applicant/accused, then the learned trial court will be empowered to cancel the concession of bail granted herein by itself with no further reference to this Court. Even otherwise, if applicants/accused misuse the concession of bail during trial, then the trial Court will be competent to cancel his bail without making any reference to this Court.
14. Suffice it to say that the observations made hereinabove are tentative and only for this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court decision of the case on merits.
15. The bail applications stand allowed in the above terms, and these are the reasons for the short order passed on 02.07.2024.

The office is directed to place a signed copy of this order in the above captioned CrI. Bail application.

**JUDGE**

**JUDGE**

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