

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Bail Application No.S-189 of 2024

Applicant: Mumtaz Ali Lashari s/o Imam Bux Lashari,
through Mr. Barrister Muhammad Azmatullah,
Advocate.

Cr. Bail Application No.S-196 of 2024

Applicants: (1) Naveed Asim s/o Ghulam Sarwar,
(2) Afzal Ahmed Shaikh s/o Iqbal Ahmed
Shaikh, through Mr. Barrister Jawad Ahmed
Qureshi, Advocate.

Cr. Bail Application No.S-209 of 2024

Applicant: Syed Adil Hussain Shah s/o Nazir Ahmed Shah,
through Mr. Mukesh Kumar, Advocate.

Respondent: The State, through Mr. Siraj Ahmed Bijarani,
Assistant Prosecutor General, Sindh.

Complainant: Inspector Agha Hussain, through Syed Tarique
Ahmed Shah, Advocate.

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Date of hearing: 09.09.2024

Date of order: 09.09.2024

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ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed three bail applications, as the same have arisen out of same Crime/F.I.R bearing No.02 of 2024, registered at PS ACE, Hyderabad Circle, under sections 409, 420, 467, 468, 471, 34, P.P.C., read with Section 5(2) Act-II, 1947.

2. Through captioned bail applications, applicants, namely, Mumtaz Ali Lashari s/o Imam Bux Lashari, Naveed Asim s/o Ghulam Sarwar, Afzal Ahmed Shaikh s/o Iqbal Ahmed Shaikh and Syed Adil Hussain Shah s/o Nazir Ahmed Shah, respectively, seek pre-arrest bail in aforesaid crime. Earlier, their applications for grant of pre-arrest bail

were dismissed by the learned Special Judge, Anti Corruption (Provincial) Hyderabad, vide orders dated 21.02.2024 & 26.02.2024, respectively. The applicants were admitted to interim pre-arrest bail by this Court, vide orders dated 22.02.2024, 23.02.2024 and 27.02.2024, now they seek confirmation of the same.

3. Briefly stated facts are that a copy of legal notice issued by advocate Muhammad Ameen Qureshi on behalf of one Makhdoom Munir-ul-Haque Siddiqui was received by the Circle Officer, A.C.E Hyderabad. It is alleged that H.G Builders & Developers had announced the two projects under the name and style of “*Hero Square*” constructed over plot No.156 admeasuring (806-66 Sq.yds) i.e. (7260-0 Sq.fts) situated at Block-D, Unit No.7, Latifabad, Hyderabad, wherein said Makhdoom Munir-ul-Haque Siddiqui purchased one unit/pharmacy admeasuring (306-0 Sq.fts) at Ground Floor through registered Sale Deed No.2442 dated 29.09.2021 executed before Sub-Registrar, Latifabad and such mutation was also effected in the record of H.M.C vide No.3922 dated 21.11.2022, after publication in daily “Aman” dated 15.11.2022. It is further alleged that prior to purchase, said Makhdoom Munir-ul-Haque had also checked the existence of pharmacy/unit in the Completion Plan No.08 dated 31.12.2020, wherein it was the part of saleable covered area i.e. (3857-06 Sq.fts). Thereafter, said Makhdoom Munir-ul-Haque came to know that H.G Builders & Developers have become dishonest and were trying to sell the entire saleable covered area of Ground Floor to someone else, though they are not competent to sell the same but they could only sell the remaining area of Ground Floor i.e. (3550-4 Sq.fts). This fact was also confirmed by him while visiting the office of Sub-Registrar, Latifabad who after checking the Day Book informed the above named purchaser about the execution of subsequent

sale deed No.2772 dated 27.10.2022 regarding the sale of Ground Floor admeasuring (3786-0 Sq.fts) alongwith common passage etc. admeasuring (1456-05 Sq.fts) of Basement Floor admeasuring (414-0 Sq.fts) (total area 5656-05 Sq.fts) in favour of one Abid Hussain Shah, which was illegal. It is further alleged that said Hero Square project had also been constructed in violation of N.O.C No.159 dated 28.02.2018 issued by the Sindh Building Control Authority to the extent of ground plus four but the H.G Builders & Developers had raised construction up-to 8th Floor but no action was taken by the Deputy Director, Sindh Building Control Authority, Latifabad and raised no question on illegal conversion of the residential plot into commercial.

4. Learned counsel for the applicants contend that the applicants are innocent and have falsely been implicated in this case; that the complainant has managed a false story; that the parties have civil dispute over the sale of one unit to different parties; that it is a fit case for further inquiry.

5. Conversely, learned A.P.G, as well as learned counsel for the complainant while opposing these bail applications maintain that the applicants are nominated in the F.I.R by names and with specific role; that the applicants have been identified by the complainant who has nominated them in the F.I.R, as such; they are not entitled for bail.

6. Heard the learned counsel for the applicants, complainant and A.P.G and perused the material available on record with their assistance.

7. It appears from the perusal of the record that **applicant Mumtaz Ali Lashari** (*in Cr. Bail Application No.S-189 of 2024*) is serving as Assistant Director/Incharge Structure and Designed in SBCA. As per challan, he issued NOC regarding structure and designed of the “*Hero Square*”

(“Project”) without site verification. **Applicants Naveed Asim and Afzal Ahmed Shaikh** (*in Cr. Bail Application No.S-196 of 2024*) is E x. Regional Director SBCA and Deputy Director, SBCA, respectively. As per challan, Applicant Naveed Asim being R.D was supervisory officer of his field staff and all the violations were made in the Project in his period but he failed to take any lawful action against the builder and facilitated to commit fraud with general public. While applicant Afzal Ahmed Shaikh did not raise any objection over illegal construction/violation in the Project and gave complete free hand to the builder and issued completion plan of the Project. As per challan, applicant Syed Adil Hussain Shah (*in Cr. Bail Application No.S-209 of 2024*) has purchased illegally the ground floor area admeasuring 3786 Sq.fts. including area of HESCO SUB-Station, sharing area, common passage as well as Air Raid Shelter at basement measuring 414 sq.fts (total area 5656 sq.fts) and made internal changes in violation of completion plan issued by SBCA.

8. It is yet to be seen at trial if alleged omissions of the applicants, employees of SBCA, come within act of “criminal misconduct” as defined under section 5 of the Prevention of Corruption Act, 1947. It may be observed that merely not observing of some rules and regulations and committing negligence by a public servant may not amount criminal misconduct in terms of section 5 (*ibid*). Moreover, bona fide purchasing of a property under claim is also to be seen in the light of the pro and contra evidence at the time of trial, if the same comes within the purview of cheating, forgery for the purpose of cheating etc.; hence, the guilt of the applicants requires further enquiry as envisaged under sub-section (2) of Section 497, Cr. P.C.

9. For what has been discussed above, interim bail granted to applicants/accused Mumtaz Ali Lashari s/o Imam Bux Lashari, Naveed

Asim s/o Ghulam Sarwar, Afzal Ahmed Shaikh s/o Iqbal Ahmed Shaikh and Syed Adil Hussain Shah s/o Nazir Ahmed Shah, vide orders dated 22.02.2024, 23.02.2024 and 27.02.2024, respectively, is hereby confirmed on the same terms and conditions.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicant(s) in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

11. Above are the reasons of my short order dated 09.09.2024.

JUDGE

****Hafiz Fahad****