

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No. S-134 & S-164 of 2021

Applicants : In Criminal Bail Application No. S-134 of 2021,
 Bandah Ali s/o Muhammad Ali Chandio
 Through Mr. Athar Abbas Solangi, advocate,

: In Criminal Bail Application No. S-164 of 2021,
 Aftab Ahmed s/o Ghulam Hyder Bughio,
 through Mr. Waseem Saif Khoso, advocate,

Respondent : The State, through Mr. Aitbar Ali Bullo, D.P.G.

Date of hearing : 12.07.2021
 Date of order : 12.07.2021

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both bail applications as the same have arisen out of same Crime i.e. F.I.R. No. 02 of 2020 registered at P.S. ACE, Larkana, under sections 409, 477-A, 380, 411, 403, 34, P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947.

2. Having been rejected their earlier criminal bail applications bearing Nos. S-134 & 164 of 2021, respectively, by the learned Special Judge Anti-Corruption (Prov.) Larkana, vide common order dated 26.03.2021, applicants/accused Bandah Ali s/o Muhammad Ali Chandio and Aftab Ahmed s/o Ghulam Hyder Bughio seek through instant applications post-arrest bail in the aforesaid Crime.

3. Briefly stated facts of the prosecution case are that, on 15.09.2020, Inspector Amanullah Rajper, Circle Officer ACE, Larkana, lodged the aforesaid F.I.R. on behalf of the State by incorporating an F.I.R. bearing No. 53 of 2020, registered at P.S. Civil Lines, Larkana by ASI Mushtaque Ali Chandio under



71

section 380, 411, 403, 34, P.P.C. to the effect that, on 16.06.2020, the said ASI while on patrolling duty along with his subordinate staff received spy information that one person was coming on VIP Road carrying different stolen medicines in a white colored van bearing registration No. CY-1091. He reached the pointed place at 1700 hrs. and on checking the said van, he found twenty cartons available in the van, out of them each of fifteen cartons were found containing 100 bottles of NOVIDATE syrup, one carton containing 150 packets of capsules CARICEF and each of remaining four cartons containing 192 packets of injection GEN-M, all were bearing endorsement "*Sindh Government Property Sale Prohibited DHO Larkana*", On enquiry, the person driving the van disclosed his name as Suhail Ahmed s/o Azizullah Sheikh and further disclosed that he had purchased the medicines from one Arbab Ali Tunio on cash for sale and also disclosed that the same were the stolen Government property. He was arrested under a mashirnama and then brought at P.S. Civil Line, Larkana where F.I.R. bearing No. 53/2020 was registered. Later instant F.I.R. was registered at ACE, Larkana by adding that since accused Suhail Ahmed Sheikh, Arbab Tunio, Bandah Ali Chandio, *storekeeper DHO Larkana (applicant in Cri Bail Appln. No. S-134 of 2021)*, Baqa-ur-Rehman Chandio, Sadam Hussain Chandio, Jafar Ali Chandio, *dispenser DHO*, Riaz Hussain Chandio and others in preconcert have stolen Government medicines and kept and sold the same, they have committed offence, while the role of Aftab Ahmed Bhugio, *record keeper (applicant in Cri. Bail Appln. No. S-164 of 2021)* and Ghulam Hyder Sheikh, *accountant DHO, Larkana* will be determined during investigation.

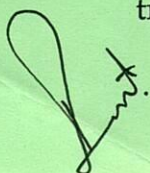
4. Mr. Athar Abbas Solangi, learned counsel for the applicant Bandah Ali, has contended that the applicant is innocent and has falsely been implicated in this case; that the contents of the F.I.R. registered at ACE are silent about any specific role of the applicant in the alleged crime; that the applicant is posted as storekeeper at DHO, Qamber while the alleged offence pertains to DHO,



Larkana, where the applicant never ever posted; that not a single carton of the medicines allegedly recovered from the co-accused Suhail Ahmed pertains to DHO, Qamber nor the applicant has any direct or indirect link with the alleged recovered medicines and mere assumption or presumption on the part of the local police and ACE investigating officer about the applicant has resulted in his implication in the case; that no reasonable grounds exists to believe that the applicant has committed the alleged offence and, therefore, he is entitled to the grant of post-arrest bail on the ground of further enquiry.

5. Mr. Waseem Saif Khoso, advocate, learned counsel for the applicant Aftab Ahmed, has maintained that the applicant is innocent and has falsely been implicated in the instant case; that the applicant in the departmental enquiry has been declared innocent; that even the I.O of the case after thorough investigation submitted the challan wherein the name of the applicant was excluded by observing that he has nothing to do with the alleged offence, but the trial Court did not consider such position; that the applicant is a health technician and performing his duty for last 17/18 years at Taluka Hospital Bakrani at Arija, but after the death of Ghulam Fareed Jatoi, *storekeeper*, he was directed to look after the post of storekeeper vide order dated 23.04.2020, which he did not join for want of physical inventory and handing over of proper charge, resultantly, he was assigned emergency duty of COVID-19; however, at no point in time he was authorized to issue medicine.

6. On the other hand, learned Deputy Prosecutor General has opposed grant of bail to applicants on the grounds that they have been nominated in the F.I.R. by names; that they in collusion with other co-accused misappropriated huge quantity of medicines supplied by the Health Department, Government of Sindh, for its hospitals to treat poor people; that the alleged offence of criminal breach of trust by public servant being punishable under section 409, P.P.C. for life



imprisonment or imprisonment for 10 years falls within the prohibitory clause of section 497, Cr. P.C., disentitling the applicants for the concession of bail.

7. I have considered the arguments advanced by the learned counsel for the applicants as well as D. P.G. and perused the material available on record.

8. Perusal of the record shows that after lodging of the F.I.R., the applicants were arrested on 29.10.2020 and since then they are confined in judicial custody. ACE has submitted the challan; hence, the applicants are no more required for investigation. The record further shows that initially the case was registered under Crime No. 53/2020 at police station Civil Line, Larkana by the local police after recovery of 20 cartons of medicines supplied by the Government of Sindh to DHO, Larkana; thereafter, the case was transferred to the ACE and then the instant F.I.R. was registered. Though the name of the applicants are found mentioned in the F.I.R. but it is silent, so also the investigation, about their specific role in commission of alleged offence.

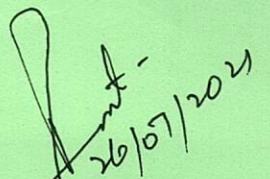
9. It appears from the tentative assessment of the record available with the prosecution that the alleged theft of Government's owned medicines was committed in DHO, Larkana and the recovery thereof was also made in Larkana. It is an admitted position that the applicant Bandah Ali is posted as storekeeper in DHO, Qamber and nothing has been brought on recorded suggesting that he ever posted in DHO, Larkana in his service tenure. It is also an admitted position that not a single medicine allegedly recovered from co-accused Suhail Ahmed pertains to DHO, Qamber. The said applicant being storekeeper of DHO, Qamber the most is answerable for any shortfall of the medicine in his office and not in the office of any other district. It also appears that nothing is available on recorded to establish that the applicant Aftab Ahmed ever held the charge of storekeeper of DHO, Larkana; besides, it is an admitted position that in department enquiry he has been declared innocent; so also, the investigating

officer could not be able to collect any material to connect him with the commission of alleged offence.

10. It goes without saying that to implicate any person for the alleged crime, it is essential for the prosecution to establish the connection of the person with the offence committed that too beyond all reasonable doubts; whereas in the instant case when the applicants had *prima facie* no authority over the seized medicines, they appear to have been nominated on mere assumption of the investigating officer of ACE; hence, the case of the applicants falls within the ambit of further enquiry as envisaged under sub-section (2) of the Section 497 Cr.P.C. Accordingly, they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees One Lac Only) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

11. 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/accused on merits. In case applicants in any manner try to misuse the concession of bail, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.

12. Above are the reasons of my short order dated 12.07.2021.


26/07/2021
JUDGE