

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Applications Nos. 572 of 2012
576 of 2012

365 of 2012
384 of 2012

270 of 2012

Present:

Mr. Justice Syed Hasan Azher Rizvi
Mr. Justice Salahuddin Panhwar

Order with signature of Judge

For hearing

25.07.2012

Mr. Raja Abdul Fateh Shaikh, Advocate
Mr. Mudassir Hussain Zaidi, Advocate
Mr. Hassan Sabir, Advocate
Mr. Imtiaz Ali, Advocate
Mr. Muhammad Ilyas Khan, and Muhammad Farooq, Advocates
Mr. Nisar Ahmed Tarar, Advocate for complainant
Ms. Shiraz Iqbal, Standing Counsel for the State
alongwith Inspector Syed Ghazanfar Ali Kazmi, Investigating Officer.

SALAHUDDIN PANHWER, J. These **five** Bail Applications Nos. 572 of 2012, 576 of 2012, 365 of 2012, 384 of 2012, and 270 of 2012 under section 497 (2) Cr. P. C and one Bail Application No. 197 of 2012 under section 498 Cr P. C, have been filed by applicants in same Crime No. 11 of 2012 under sections 409/406/420/477A/109/34 PPC of Police Station FIA Commercial Bank Circle, Karachi, therefore we would dispose of all the above five applications by one order.

1. The relevant facts are that complainant Dr. Mirza Ikhtiar Baig, Chairman CEO M/s Pak Denim Limited lodged written complaint to Director FIA, Sindh Zone, Karachi in respect of funds embezzlement in his company through forged cheques in collaboration with some employees and banking staff, encashed through Askari Bank, Atrium Mall Branch Karachi. On written complaint, inquiry was conducted; during inquiry it revealed that the Relation Manager of Standard

Chartered Bank, Muhammad Khurram Tariq, with the connivance of Syed Atif Hussain OG-II and Atif Sheikh of Clearing Department of Askari Bank misappropriated amount in different accounts; the fraudulent amount was credited in a benamidar account of Kamran Latif & Co, maintained at Askari Bank, Atrium Mall Branch Karachi; during the course of investigation all relevant documents of account of M/s Kamran Latif and Company and account of Muhammad Ali in Standard Chartered Bank were seized; after investigation interim challan was submitted against accused (1) Muhammad Ali (2) Muhammad Yousuf, (3) Ramesh Lal, (4) Syed Atif Hussain, (5) Sheikh Atif Hussain, (6) Sohail Anwar, (7) Muhammad Khurram Tariq, (8) Shiraz Ali, (9) Kamran Latif, (10) Adnan Qadir and (11) Saeed Rajput; that all accused persons have committed offence of breach of trust and cheating.

2. Learned counsel for the applicants have, inter alia, contended that applicants have been involved in false case; applicants are private persons hence section 409 PPC is not applicable to them; that co accused Syed Atif Hussain with specific role, has been granted bail after arrest by the trial Court and co-accused Sheikh Atif Hussain, Kamran Latif, Saeed Ahmed have been granted bail before arrest by trial Court vide order dated 08.05.2012 and 23.05.2012 respectively; that applicants have almost identical role to the accused granted bail by trial Court; complainant is private company hence offence does not fall within the jurisdiction of Banking Court; some of applicants are still working in same company; they have relied upon the cases of Khizar Hayat v. The State (2010 YLR 1180); 2008 SCMR 173 and Saeed Ahmed v. The State (1996 SCMR 1132).

3. Conversely, learned counsel for the complainant Mr. Nisar Ahmed Tarar and learned Standing Counsel Ms. Iqbal Shiraz have argued that accused persons have committed breach of trust; they have been assigned specific role in this case; they are beneficiary of embezzled amount hence they are not entitled for bail.

4. Heard counsel for the parties. Perused record.

5. It is fact that total seven accused persons have been challaned in this case, out of seven, one accused Syed Atif Hussain Shah has been granted bail after arrest and accused Saeed Ahmed, Sheikh Atif Hussain and Kamran Latif have been granted bail before arrest by the trial Court. It will be very proper and relevant to reproduce the relevant portion of report under section 173 Cr P C to determine, whether present applicants are entitled for bail on the rule of consistency as they have identical case to the accused who have been granted bail by the trial Court.

“Prior to registration of this case an enquiry was conducted at CTW (Counter Terrorism Wing) FIA Karachi, in which it was concluded that the case U/S 406, 420, 477A, 109, 34 PPC is made out against accused persons namely Saeed Rajput the then CFO, Muhammad Ali Kolachi former Purchase-in-charge, Nasir Abbas Zaidi (Expired, death certificate placed on file), Muhammad Yousuf Cashier (who was holding the possession of all cheque books of company and made fake signatures on these cheques of complainant and another authorized signatory Mirza Ishtiaq Baig), Sohail Awan Account Manager, Shiraz Ali Ex-Employee, Muhammad Khurram Tariq of SCB, Syed Atif Hussain OG-II and Atif Sheikh of Askari Bank and others. It is also confirmed by the Chairman and CEO of Pak Denim Company Limited (now complainant) and Mirza Ishtiaq Baig another PW and signatory of the cheques of the company, that the amount of Rs.15.05 Million Pak Rupees was misappropriated by falsifying the books of the account by accused Saeed Rajput the then CFO Muhammad Ali Kolachi for Purchase Incharge. Nasir Abbas (died) death certificate place on file. Muhammad Yousuf Cashier, Sohail Awan Accounts Manager, Ramesh Dhiraj Lal and Shiraz Ali Ex-Employee of the company with the collusion and abetment/connivance of each other and bank officials”.

6. Admittedly, two accused Kamran Latif and Muhammad Ali were charged on same allegation that both possess the account, wherefrom amount was misappropriated; out of both accused, Kamran Latif has been granted bail by trial Court and it is manifest in the prosecution story that accused Atif Hussasin OG-II and Atif Sheikh being bank officials have been charged to manage false accounts and misappropriated the amount of complainants company, both accused have been granted bail by the trial Court. Under these circumstances, it is suffice to say that case of applicants is at par of co-accused, who are on bail, already granted by the trial Court thus the applicants are also entitled for equal treatment in the eyes of law on rule of consistency.

7. Regarding contentions of learned counsel for complainant that this is a case of breach of trust and forgery, it is pertinent to say that bail cannot be withheld as punishment, when the case depends upon documentary evidence all the documents are in possession of prosecution, therefore there is no chance of tampering in prosecution case. The authenticity and admissibility of documents can be determined at the trial stage; this proposition of law is well established, as decided in the case of Saeed Ahmed v. The State reported in 1996 SCMR 1132, it is observed as under:

“The case entirely depends upon documentary evidence which seems to be in possession of the prosecution and challan has already been submitted. The objection of the learned counsel regarding addition of section 409 PPC may carry some weight while considering bail application, as there is no possibility of tampering with the evidence, which is entirely documentary in nature and in possession of the prosecution, petition was converted in appeal and bail was granted”.

8. Keeping in view the dictum laid-down by Hon'ble Supreme Court in case referred above, we are convinced that the applicants have succeeded to establish their case for bail hence they are entitled to be enlarged on bail.

9. By our short orders dated 25.07.2012, we have already granted bail to the applicant Muhammad Ali Kolachi in Cr. Bail Application No. 365 of 2012 in the sum of Rs.2,000,000/- (Rupees Two Million); to the applicant Ramesh Dhiraj Lal in Cr. Bail Application No. 384 of 2012 in the sum of Rs.1,000,000/- (Rupees One Million) and to the applicants in Cr. Bail Applications Nos. 572, 576,

and 270 of 2012 in the sum of Rs.500,000/- (Rupees Five Hundred Thousand) each and PR Bond in the like amount to the satisfaction of the trial Court and these are the detailed reasons for the same.

Judge

Judge