

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No 1278 of 2014

Present:

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Muhammad Junaid Ghaffar

Azhar Ali Khwaja & Another Applicants

Versus

The State..... Respondent

Date of hearing: 01.10.2014

Date of Order: 01.10.2014

Petitioner: Through Mr. M.A. Kazi and Irshad Jatoi
Advocate.

Respondent: Through Ainuddin Khan, DAG along with I.O.
Abdul Rauf Shaikh.

ORDER

MUHAMMAD JUNAID GHAFFAR,J: Instant bail application has been filed by the applicants/accused namely *Azhar Ali Khawaja* son of *Manzoor Elahi Khawaja* and *Saeed Ahmed Qazi* son of *Ahmed Ali Qazi*, being aggrieved and dissatisfied with the order dated 25.06.2014 passed by the learned Link Special Judge (Offences in Banks), Sindh at Karachi in Case No.40/2014, emanating from Crime No.30/2014 registered under Sections 109/420/467/468/471/109 /34 PPC read with Section 5(2) Provision of Corruption Act 1947 read with Sections 3 and 4 Anti Money Laundering Act, 2010, at Police Station FIA, Commercial Bank Circle, Karachi, whereby, the bail application of the present applicants along with other co-accused, namely *Nasir Mehmood Ishaqi* son of *Ashfaq Hussain Siddiqui* has been dismissed.

2. The applicants have approached this Court under Sections 497, 498 and 561-A Cr.P.C read with Section 5(6) of the Offences in respect of Banks (Special Courts) Ordinance 1984 with prayer to release them on furnishing solvent surety during pendency of the trial.

3. We have heard the learned Counsel for the applicants and the learned D.A.G. at length who has been duly assisted by the investigating officer and have perused the record and our observations are as follows;

a) It appears that the learned trial Court while dismissing the bail application of the present applicants along with other co-accused, namely *Nasir Mehmood Ishaqi* son of *Ashfaq Hussain Siddiqui* has not dealt with their case independently, with regard to the role assigned to them in the instant FIR. The applicant No.1 was posted as Branch Development Manager at Allied Bank of Pakistan ("ABL"), Hasan Square Branch, from 22.5.2013 to 06.02.2014, whereafter he was transferred to Allied Bank, PIDC, Branch, Karachi, whereas, the applicant No.2 was posted as Business Service Manager, ABL, Hasan Square Branch, Karachi. On the other hand the other co-accused, namely, *Nasir Mehmood Ishaqi* was an officer of (defunct) City District Government, Karachi, now K.M.C and as per the prosecution's case, was nominated in the instant crime for being involved in premature encashment of Term Deposit Receipts (TDR's) available / deposited on behalf of KMC with Allied Bank of Pakistan. This Division Bench vide order dated 26.9.2014 has already granted bail to the said co-accused namely *Nasir Mehmood Ishaqi* son of *Ashfaq Hussain Siddiqui*. However, since the role assigned to the present applicants is somewhat different than the co-accused, we would decide their bail application separately keeping in view the role assigned to them in the instant crime.

b) From perusal of the contents of the FIR, it may be noted that though the name of the present applicants namely, *Azhar Ali Khawaja* and *Saeed Ahmed Qazi* has been mentioned in the concluding Para of the FIR, however, it appears that no role whatsoever has been assigned to the present applicants in respect of alleged crime.

c) On the other hand, in the interim challan submitted by the prosecution, the only allegation which has been attributed against the present applicants is, that being Branch Manager and supervisory officers of ABL Hassan Square Branch, Karachi, they were required to be more vigilant before acting upon any direction of the authorized officers of KMC, namely, Mr. Wasi Usmani, Director (R&R) and Nasir Mehmood Ishaqi, Director (Budget) Finance Department (*already on bail vide order dated 26.9.2014 as referred to hereinabove*) for premature encashment of TDR's and transfer of funds to the account of KMC as well as to a private company. However, on perusal of record and examination of certain documents produced on behalf of the applicants, it appears that the officers who had prepared the pay orders in the name of KMC and a private party, on the basis of such directions, namely, *Muhammad Nadeem* and *Qaseem Raza* have not been implicated in the instant crime nor have been cited as witnesses, though they were at the relevant time working in the same branch and were infact instrumental in preparation of the said pay orders. It has been noted from perusal of the record that primarily the FIR has been registered by FIA against one *Wajahat Hussain Naqvi* who was the then Branch Manager of ABL, Hasan Square Branch, Karachi, initially an absconder and now deceased, and as per the case of the prosecution, was instrumental in getting the said TDR's encashed, prematurely, causing losses to KMC, whereas the present applicants had acted on the basis of directions issued by the concerned officials of KMC with regard to alleged premature encashment of TDR and preparation of pay orders in favour of K.M.C. The allegation that they should have been vigilant in acting on the directions of officials of KMC, at this stage of the proceedings, cannot be made basis to withhold bail, as the same

requires further inquiry in the matter to ascertain that as to who had issued such directions and as to whether such directions were forged or genuine.

d) It is also important to observe that the prosecution has not implicated the persons who had in fact prepared the said pay orders, which appears to be a case of pick and choose, whereas it has also come on record that during this period the applicant *Saeed Ahmed Qazi* was on leave and in his place *Syed Qaseem Raza* was performing his duty as Branch Manager, who has not been implicated in the instant matter. It has also come on record that the preparation of pay orders was in fact the job of the Branch Operations Manager, whereas, the applicant No. 2 on 15.01.2014, when one of the alleged transactions took place was on leave. This fact has come on record through statement under Section 161 Cr.P.C. of one of the witnesses of prosecution namely Syed Muhammad Shakeel-ud-din, Business Service Manager, ABL Hassan Square Branch, Karachi, whereas, the Investigating Officer of the case present in Court also could not dispute above facts.

e) On perusal of the record it is also noticed that no material whatsoever has been produced or referred by the prosecution, which may suggest that the present applicants were somehow beneficiary of the alleged misappropriated amount or had abetted in the crime with the other co-accused persons towards commission of alleged offence of misappropriation of public funds, fraud, cheating or money laundering etc. Such fact was also candidly conceded by the Investigating Officer present in Court, that insofar as the present applicants are concerned, neither they are direct beneficiary of alleged transaction(s) nor prosecution has been able to trace out any account in their names in which any amount alleged to have been embezzled was credited.

f) The entire case of the prosecution revolves around documentary evidence, which is already in their possession, whereas the present applicants are no more required for

investigation, and for the sake of repetition we may observe that no material has been shown to us so as to establish that the present applicants are in fact real beneficiaries of the alleged crime or have made unlawful personal gains out of the alleged embezzled money, whereas, the other co-accused who was the authorized officer of KMC is concerned, has already been admitted to bail vide order dated 26.09.2014 in Criminal Bail Application No.117 of 2014.

4. In view of herein above facts and circumstances of the instant matter, we are of the view that the present applicants namely *Azhar Ali Khawaja* son of *Manzoor Elahi Khawaja* and *Saeed Ahmed Qazi* son of *Ahmed Ali Qazi* have made out a case of further enquiry and their case falls within the provision of Section 497(2) Cr.P.C., and are entitled to be released on bail. Accordingly, the applicants were admitted to bail subject to furnishing solvent surety in the sum of Rs.2 Million each with P.R. bond in the like amount to the satisfaction of the trial Court by order dated 1.10.2014. Above are the reasons of our short order.

5. The above bail order has been passed by us in a shorter format as prescribed by the Honorable Supreme Court in the case of *Muhammad Shakeel V/s The State (PLD 2014 SC 458)*, whereby we have not reproduced the entire contents of the FIR as well as the details of the arguments so addressed / raised by the learned Counsel for the applicants as well as learned D.A.G.

JUDGE

JUDGE