

IN THE HIGH COURT OF SINDH AT KARACHI

Present:**Mr. Justice Aqeel Ahmed Abbasi.****Mr. Justice Muhammad Junaid Ghaffar.**

Criminal Bail Application No. 1064/2014

Syed Qamar Hussain Naqvi & another ----- Applicants**Versus****The State ----- Respondent**

Criminal Bail Application No. 364/2015

Syeds Sadaf Zehra ----- Applicant**Versus****The State ----- Respondent**

Date of hearing: 28.5.2015

Date of order: 28.5.2015

Petitioner: Through Mr. S. Ghulam Husnain Advocate.

Respondent: Mr. Dilawar Hussain Standing Counsel
Assisted by Inspector (FIA) Abdul Rauf Shaikh
Investigating Officer.**ORDER**

MUHAMMAD JUNAID GHAFFAR, J. Through instant Bail Applications the applicants / accused namely *Syeda Sadaf Zehra, Syed Qamar Hussain Naqvi and Syed Ali Hussain Naqvi* have sought Pre-arrest Bail in respect of 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.

2. We have heard the learned Counsel for the applicants and the learned Standing Counsel at length who has been duly assisted by the Investigating Officer and have perused the record and our observations are as follows:-

- a) The instant crime has been registered by FIA primarily against one main accused namely *Wajahat Hussain Naqvi* who was the then branch Manager of Allied Bank of Pakistan Limited, Hassan Square Branch, Karachi, initially an absconder and now deceased, and as per the case of prosecution, was instrumental in the premature encashment of Term Deposit Receipts (TDR's) of KMC, deposited with Allied Bank of Pakistan, causing losses, and had also embezzled money of KMC in connivance with some officials by making and preparing pay orders in the name of some private persons. The applicant in Cr. Bail Application No. 364 of 2015 namely *Syeda Sadaf Zehra* is the widow of *Wajahat Hussain Naqvi* and the precise allegation against her is that she is also a beneficiary of the proceeds of crime, committed by the deceased. According to the prosecution, she knowingly abetted in commission of the said crime, by helping her late husband in laundering the proceeds of crime by possessing assets obtained from the proceeds of such crime and such act amounts to commission of offence in terms of Section 34 and 109 PPC read with Sections 3 & 4 of Anti Money Laundering Act, 2010. Whereas, the applicants in Criminal Bail Application No. 1064/2014 namely *Syed Qamar Hussain Naqvi* and *Syed Ali Hussain Naqvi* are concerned, they respectively happen to be the father and brother of the main accused namely *Wajahat Hussain Naqvi*. Somewhat similar allegations have been leveled against them in the interim challan, whereby, it has been stated that *Syed Qamar Hussain Naqvi* also laundered the proceeds of crime by establishing business in

the name of Jerri Cattle Farm and Jerri Foods (Pvt.) Limited, and also opened and operated false bank accounts in different banks / branches and also purchased various properties, whereas, being a retired employee, he had meager sources of income. Similar case has been made out against *Syed Ali Hussain Naqvi* who happens to be the brother of the main accused. In nutshell, the case of prosecution against the aforesaid applicants / accused is that they all are, and were, beneficiaries, of the alleged crime and having knowledge and reason to believe that such money was earned by the deceased *Syed Wajahat Hussain Naqvi* through commission of the said crime, had abetted in the commission of the said crime.

- b) On perusal of the record and the interim challan furnished before the trial court, we have noticed that insofar as the applicant in Criminal Bail Application No. 364 of 2015 is concerned, namely *Syeda Sadaf Zehra*, she happens to be the widow of main accused and there are some properties which have been found by the prosecution, in her name and it is the claim of the prosecution that all these properties were purchased by the deceased accused in the name of his wife as Benami properties. Such fact has also been admitted by the Investigating Officer present in Court however, he has submitted that the applicant is liable to be prosecuted in terms of Section 3 & 4 of the Anti-Money Laundering Act, 2010. Insofar as the case against the other two accused namely *Syed Qamar Hussain Naqvi* and *Syed Ali Hussain Naqvi* in Criminal Bail Application No. 1064/2014 is concerned, the prosecution's case is that in addition to having purchased properties in their names, they were also operating some bank accounts and there were transactions of huge amount in these accounts and it is the case of the prosecution that all this money being credited and deposited in these accounts was so obtained by the deceased accused from the aforesaid crime. Perusal of challan and the material placed before us, reflects that all these allegations against the present applicants do not corroborate in any manner,

whereby at this stage of the proceedings, the applicants could be said to be directly involved in the commission of the said crime, except that as of a beneficiary and or as Benami owners of the said properties / accounts. The learned standing Counsel duly assisted by the Investigating Officer, also could not controvert such position, except that according to the prosecution, all these three applicants, knowingly and with reason to believe, had participated in the said crime. However, we are of the view, that except mentioning such allegations in the interim Challan, no corroborating material, whatsoever, has been placed on record before us, whereby, such allegations could be justified at this stage of the proceedings. Merely having property and bank accounts in their names could not necessarily be made a basis of having them involved in the said crime, without there being any corroborating evidence to the effect that they have participated and or were instrumental in the commission of in such crime. There is, and may be a possibility, that their names and identity had been utilized by the deceased accused, as Benami owners, as it is not the case of the prosecution that applicants have been directly involved in the commission of the crime, rather, are beneficiaries and have been involved in the said crime on such presumption.

- c) It may also be noted that the entire case of prosecution revolves around the documentary evidence, which is already in their possession, whereas, the present applicants, are though not required for any further investigation, however, have given undertaking, before this Court, that they will fully cooperate with the prosecution as and when required. The other co-accused in the instant crime namely *Nasir Mahmood Ishaqui*, an official of KMC, has already been granted post arrest bail by this bench vide order dated 26.9.2014 in Criminal Bail Application No. 117/2014, whereas, two other accused namely *Azhar Ali Khawaja* and *Saeed Ahmed Qazi* the then Branch Development Manager and Business Service Manager, Allied Bank of Pakistan Limited, Hassan Square

Branch have also been granted post arrest bail by this bench vide order dated 1.10.2014 in Criminal Bail Application No. 1278/2014. Moreover, in the absence of any incriminating material against the present applicants which may connect them directly with the commission of crime, the matter requires further inquiry and concrete evidence to establish the link of money laundered and the properties and bank accounts in the names of present applicants. While confronted with hereinabove legal position, the Investigating Officer of the case and the learned Standing Counsel could not controvert such legal position as emerged in the instant case.

3) In view of herein above facts and circumstances of the instant case, we are of the view that the present applicants namely **Syeda Sadaf Zehra, Syed Qamar Hussain Naqvi and Syed Ali Hussain Naqvi** are entitled for bail. Accordingly, the ad-interim pre arrest bail granted to all the three applicants is confirmed subject to furnishing of surety in the sum of Rs. 2,000,000, /- (Rupees Two Million) each with P.R. Bond in the like amount to the satisfaction of the Nazir of this Court. Since the applicants have already furnished surety of Rs. 500,000/- in view of order dated 30.3.2015 in Special Criminal Bail Application No. 364/2015 and order dated 24.6.2014 in Special Criminal Bail Application No. 1064/2014, they are directed to furnish additional surety of Rs. 1.5 million (Rupees Fifteen Lacs) each with P.R. Bond in the like amount to the satisfaction of the Nazir of this Court within one week from the date of this order. Cr. Bail Applications No. 364/2015 and 1064/2014 stand disposed of in these terms.

4. It is however, observed, that if at a later stage, the prosecution comes into possession of any direct or corroborating material or evidence against the present applicants, to the effect that they were directly

involved in the commission of the alleged crime, or were having knowledge or reason to believe with regard to the commission of the offence in question, they may approach this Court for cancellation of bail granted to the present applicants in accordance with law. It may also be observed that the observations hereinabove are tentative in nature and shall not have any effect on the case of the prosecution before the trial court which shall be decided strictly in accordance with law and on the basis of evidence produced before the trial court

5. The above bail order has been passed by us in a shorter format as prescribed by the Honourable 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 DAG.

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