IN THE HIGH COURT OF SINDH, CIRCUIT COURT,

HYDERABAD

Criminal Bail Application No.S-248 of 2025

Criminal Bail Application No.S-249 of 2025.

Applicants: Faizan Naeem son of Muhammad Naeem and Muhammad Kashif son of Muhammad Yousaf.

Through Main Taj Muhammad Keerio, Advocate.

Respondent: The State

Through Mr. Irfan Ali Talpur, A.P.G.

Date of hearing: 25.03.2025

Date of order: 25.03.2025

O R D E R

Syed Fiaz ul Hassan Shah, J:

1. The Applicants seek their admission to post arrest bail in Crime No.03 of 2024 registered under sections 409, 419, 420, 468, 471, 477-A, 109 PPC r/w Section 5(2) PCA, 1947, with P.S FIA Composite Circle, Mirpurkhas. After the arrest applicant Faizan Naeem preferred his bail plea before the Court of Special Judge Anti-Corruption (Central) Hyderabad vide Criminal Bail Application No.52 of 2025 (Re-Faizan Naeem Vs. The State) while applicant Muhammad Kashif preferred his bail plea before the same Court vide Criminal Bail Application No.55 of 2025 (Re-Muhammad Kashif Vs. The State) and same were

dismissed vide order[s] dated 08.03.2025; hence, instant bail applications have been maintained.

2. The facts of the case in nutshell are that the enquiry No.20/2023 of FIA Composite Circle Mirpurkhas was registered on the source report submitted by the undersigned against officers/officials of HESCO, operation Division Umerkot on the allegation that accused officers/officials of HESCO Umerkot Division in collusion with each other have misappropriated/embezzled funds from salary head/payroll and other heads by demanding excess amount as well as withdrawal/disbursal of the same, and thus they have committed fraud, forgery, cheating, falsification of accounts, criminal misconduct and caused loss to the national exchequer.

3. It is inter-alia contended by the counsel for applicants that applicants/accused are innocent and have falsely been involved in the case of misappropriation / embezzlement; that the applicants are neither employees of HESCO nor employees of any Bank but applicant Faizan Naeem is performing his duties with DHA Karachi as private contingent employee and applicant Muhammad Kashif as Primary School Teacher in Education Department; that the truth is that their brother and relative namely Muhammad Asif is Branch Manager at UBL Bank and the IO approached them and threatened for their involvement, consequently, said Muhammad Asif filed one Constitutional Petition No D-1358 of 2024 before High Court of Sindh, Circuit Court, and Mirpurkhas for protection against unjustified harassment of IO Due to

which the IO became annoyed on the applicants and inserted their names in Final Challan in order to pressurize the applicants/accused for illegal gratification; that, due to none payment of illegal gratification, the IO became aggressive and annoyed and issued serious threats to applicants/accused; that, thereafter, the IO approached the applicants/accused and asked for huge bribe or else, they will be indulged in instant FIR however, the applicants/accused did not fulfill illegal and unlawful demands of the IO and they were dragged at the time of Final Charge Sheet; that the names of applicants do not transpire in the FIR as they are not public servant, therefore, section 409 PPC so also 5(2) PCA 1947 are not applicable, they had not benefited from the transaction and they were having no concern with the transaction; that investigation is complete challan had been submitted and the physical custody of applicants is not required; that co-accused namely Safeer (private beneficiary) and Ahmed Khan (XEN HESCO) in tagged criminal bail application bearing no. 624 and 739 of 2024 were granted bail by this Court vide order dated 21-10-2024, the case of present applicants/accused is on same footing hence rule of consistency may be applied to present applicants/accused; that this Court while granting bail to other accused vide Order dated-29-05-2024 stated that, "large number of persons accused are involved. The trial in the current case could potentially entail 44 lawyers and more than 44 Cross- Examinations and the Arguments opportunities would supposed to be done which will take incalculable time. Realistically, it is hard to imagine when this trial, which is yet to

begin, will actually end. Does the State expect that the applicants be kept incarcerated till the end of the trial?" hence the present applicants / accused also entitle for grant of Bail on same observation of this Court. He lastly urged that there is no apprehension that the applicants are attempting to temper or destroy the prosecution's evidence., hence case is fit for further enquiry, therefore, applicant may be admitted on bail

4. On the other hand, learned APG opposed the bail applications on the ground that firstly, 15 times transaction was made in the account of applicants/accused, wherein, total cash of Rs.4,31,93,642/-were deposited in their account and same were withdrawn by themselves; that Bank Manager co-accused Muhammad Asif had facilitated them being brother and relative of applicants/accused in deposit and withdrawal of the cash from the account of the applicants/accused; that applicants still have not furnished explanation that where they had utilized public amount of Rs.4,31,93,642/-as same was deposited in their account; that as they physically appeared in the bank for withdrawal of different transaction, therefore, they are not entitled for concession of bail at this stage.

5. I have heard the learned counsel for parties and perused the record.

6. The main case of prosecution is encircling around embezzlement of huge amount of Public Exchequer which has been usurped through a criminal conspiracy by the Officials of Human Resource Directorate, HESCO who firstly prepared forged documents in respect of the fake or impersonated employees and issued fake sanction strength. Later, the

purported funds on account of salary of fake employees have fraudulently been released by the Finance Directorate, HESCO in favor of Directorate of Operation, HESCO and its Engineers working in different District. The second phase started when the Official of Directorate of Operation Division, HESCO transferred /credit the amount received from the Finance Directorate, HESCO into fake accounts and/or accounts of different individuals and companies when such officials or companies have no concerned or connection with the HESCO and its fund.

7. The aforesaid amount was transferred by Finance Directorate of HESCO, Hyderabad in the Account No.PK69UNIL019000 223914735, UBL, Umerkot Branch, maintained in the name of M/s Executive Engineer Operation Division, Umerkot. Thereafterawards, the Officials of HESCO further incollussion and inconnivance with Bank Officials illegally and without lawful authority transferred the aforesaid amount of HESCO released by Financial Directorate on account of employees and falsely verified by the Human Resource Directorate of HESCO.

8. Adopting the said modus operandi, the culprits involved in the commission of offence on the basis of fake and bogus documents, committed misappropriation of funds Rs.73,11,88,545/- through different fake accounts which has finally aided and abetted by the Bank officials. Unfortunately, the Investigation Officer conceded that out of present scam for Rs.**25,86,22,146/- (Rupees Twenty-Five Crore Eighty-six Lac One hundred forty-six)** so far, only **26,00,000/- (Rupees Twenty-Six Lac)** crime proceeds have been recovered.

9. The Federal Investigation Agency has conducted Inquiry No.20/2023 under section 5(5) of the FIA Act, 1974 to probe, recover and fix the responsibility for the embezzlement of amount which has been misappropriated from the funds generated/credited by HESCO on account of payment of monthly salaries to its employees. As per Prosecution case, during the Annual Audit for the period 2017 to 2023, it has come on record in Inquiry No.20/2023 that Rs.731,188,545/- was released by the Chief Financial Officer of the HESCO Headquarters, Hyderabad on account of different heads of payment as follow:

No	Head of Account	Release amount	Expenditure	Difference
1	520100	657596491/-	421605665/-	232990826/-
2	650000	43313604/-	20354566/-	22959038/-
3	520405	27282631/-	19399858/-	7882773/-
4	520115	2995819/-	2319393/-	676426/-
Amount credit back to CFO, HESCO Bank Account				5886917/-
Amount siphoned off /Losses				**258622146/-**

10. Interestingly, the Annual Budget grant was surreptitiously revised. The Additional Budget was granted and thereafter Revised budget have also been granted by the Chief Financial Officer, HESCO vide letter of even number dated 29.06.2021 on recommendations of Iftekhar Mehmood, Assistant Manager (Budget) and Deen Mohmmad Keerio, Manager Finance (CPC) and CFO Hina Talpur. Ultimately, the ***mens rea*** and ***actus rea*** have completed by siphoned off more than **258622146/-** and the HESCO has sustained losses without its fault. Apart from the aforesaid embezzled and looted amount, about Rs.43,193,642/- were credited into the Applicant's

Account No.11320095004746013 maintained at Bank Al-Habib Kunri Branch, District Umerkot.

11. The Counsel for the Applicants has categorically admitted that the applicants are ordinary employee in DHA and although the above-said Account stands in the name of Applicants but they have not applied for opening of account and they have not issued a single cheque in favor of anybody. On the other hand, the non-recovery of cheque books and non-recovery of the cheques presented to Bank Al Habib, Kunri Branch about further transferred of looted money of Rs. 43,193,642/- from the impersonated and fake Account of the Applicant 11320095004746013 is a big stigma on the performance of the Investigation Officer and his Supervisory Investigation Officer / Head of Composite Circle Mirpur Khas.

12. Ultimately, the matter was referred to FIA for criminal inquiry and after conclusion of Enquiry No.20/2023, the FIA has registered Crime No.03 of 2024 with Composite Circle, Mirpur Khas. The Investigation and Prosecution of FIA has not acted fairly, diligently and in accordance with law. The person, including the Applicants before me, whose names have been misused and who have declared that he or she has not opened account and their names or CNIC have misused, they could be joined as Prosecution witness to strengthen the case and even for this purpose, the legislature have brought provision of section 164 Cr.P.C. Conversely, the Investigation Officer have charged them as accused and himself vanished the best piece of evidence.

13. The members of FIA under section 5(5) of the Act of 1974 are unfettered or the same required to be used frugally in exceptional cases with certain restrictions and limitations? The power of an FIA official, having relevancy with the proposition in hand is mentioned in section 5(5) of the Act of 1974 which for correctly dilating upon the controversy in hand is being reproduced as under:

> "5. Powers of the members of the Agency.
>
> (1) ……..
>
> (2)……
>
> (3)……
> (4)……
>
> (5) If in the opinion of a member of the Agency conducting an investigation, any property which is the subject-matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may by order in writing direct the owner or any person who is, for the time being in possession thereof, not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the Court having jurisdiction in the matter."

14. The Federal Investigation Agency have powers to issue an order in writing for placing an embargo upon the removal, transfer or otherwise disposing of a property which is subject matter of an ongoing investigation and of course the order under the above quoted provision can only be passed by the member of FIA, if he is of the opinion that process of

investigation is likely to be thwarted by removing, transferring or disposing of subject matter property and only in cases of utmost urgency wherein time required for having recourse to the court will provide an opportunity to the possessor of the property to remove or dispose of it. Obviously, such powers are not unfettered, rather are subject to certain restrictions and limitations, required to be used sparingly and in cases of exceptional nature. Reliance is placed on ***"Fazal Mahmood Vs. Sardar Khan", (PLD 1996 Karachi 475)***, the relevant portion thereof is reproduced as under:

> "a member of F.I.A. should not frequently or freely resort to the use of power under section 5 (5) of the F.I.A. Act but such powers should be exercised with restraint and caution as its use may sometime result in the infringement of Article 24 (1) of the Constitution, 1973, which guarantees that no person shall be compulsorily deprived of his property save in accordance with law."

15. It can inexorably be concluded that primarily the order of seizure is to be obtained from appropriate authority but the Investigation Officer has failed to do so as well as failed to recover the crime proceeds. In contrast, the power conferred under sections 3 & 4 of Anti-Money Laundering Act, 2010 (hereinafter to be referred as AMLA, 2010) are concerned, it will be expedient to reproduce the same:

> **"3. Offence of money laundering.** —A person; shall be guilty of offence of money laundering, if the person:
>
> (a) acquires, converts, possesses, uses or transfers property, knowing of having reason to believe that such property is proceeds of crime;

(b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;

(c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or

(d) participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c).

Explanation.—The knowledge, intent or purpose required as an element of offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).

Explanation II.—For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required.

16. This Court while hearing bails applications S-379 of 2024 & 16 others vide Order dated 29.05.2024 observed as

> “14. It is apparent that the F.I.A has used its powers to register cases and arrest those accused in a pre-mature, mechanical and callous manner with little regard for people’s right to dignity enshrined as a fundamental right in our Constitution. Law enforcement agencies cannot be permitted to have such unbridled powers. Those in command of the Agency should ensure that its investigators and officers understand that not every case merits an immediate arrest. Arrests should be made as a last resort based on realistic and reasonable grounds. The trigger-happy

reactions of law enforcement agencies in arrests must be curtailed and strictly regulated. It is pertinent to note that Rule 3(2) of the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 provides that:

(2) After an inquiry or investigation has been registered, the inquiry or investigation shall proceed with care and discretion, and no undue publicity shall be given to it. Special care shall be taken to ensure that no unnecessary damage is caused to the prestige, reputation and dignity of any public servant involved.

15. Upon a tentative assessment, it appears that by arresting persons left, right and centre based on incomplete evidence, the F.I.A. may be in breach of the above-cited Rule. It must not be forgotten that in Shahzada Qaiser Arafat vs The State (PLD 2021 SC 708), the Supreme Court has ordered that investigating officers should not mechanically arrest a person accused of having committed a cognizable offence; rather, they must exercise their discretion in arresting such person judiciously by applying their mind to the particular facts and circumstances of the case and consciously considering the question: what purpose will be served and what object will be achieved by arrest of the accused person?" The same sentiment was echoed earlier in the case of Mst. Sughran Bibi vs The State (PLD 2018 SC 595) in which the Court held that: "Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such

justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course and unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue."

16. In the current case, upon a tentative assessment, as also mentioned above, the F.I.A. has acted prematurely in exercising its power of arrest and thus may be in breach of the above-cited judgments. As observed by the Supreme Court in Taufiq Asif vs General (Retd.) Pervez Musharraf and others (C.P. No. 3797 of 2020 Judgment passed on 10.01.2024): "Failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system established by the Constitution. Judgments of this Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution. This obligation reflects a fundamental commitment to preserving the integrity and sanctity of the Supreme Court.

17. Evidence in this case is documentary and is all in F.I.A's. possession. There is little the applicants can do to tamper with it. The State raised no flight risk concerns. Some of the offences are bailable, whereas the others, though

not bailable punishment, fall within the non-prohibitory clause of section 497 Cr.P.C. I am also drawn to the wisdom of the Supreme Court in Chairman NAB vs Nisar Ahmed Pathan (PLD 2022 SC 475), where the Court very meaningfully observed that: "Where two opinions can reasonably be formed based on the same material, the courts should prefer and act upon that which favours the accused person and actualises his fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention. To err in granting bail is better than to err in declining, for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail. Still, no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial." FI.A. may have a case, but that is for them to prove at trial."

17. Consequently, post arrest bails were confirmed by this Court vide aforesaid Order. Thereafter, another bail was confirmed of Accused Safeer vide Order dated 21.10.2024 passed in Cr.Bail Application No.S-624 of 2024. The case of Safeer is at par with the case of present Applicants.

18. Another important aspect of the case is that the Investigation Officer of FIA has completely ignored the one of the important aspect of the case whilst he has invoked the provision of Anti Money Laundering Act, 2010. Undisputedly, the fake account in the name of Applicants has been opened by the actual culprits but it has not been investigated to bring the truthfulness. Furthermore, the FIA Officials have not bothered to examine the Applicants before taking any coercive action

and measures of arrest in order to ascertain the social and financial status of the Applicants.

19. Undoubtedly, the Applicants are an ordinary employee in DHA, and Education Department. The Investigation Officer so also the prosecution side of FIA failed to inquire from the bank officials including it Head of Compliance and Head of Risk Management about the “due diligence” and generation of suspicious transaction report or currency transaction report legal action and recommendations for the dissimilarities of source of income and disproportionate credit and debit transaction in enormous sum of Rs.43,193,642/-.

20. Under the provision of Anti Money Laundering Act, 2010, it is obligatory upon every branch manager to report the dissimilarities and huge transaction of any account other than the normal activities as per the KYC (Known Your Person) report generated at the time of opening of the account in order to fix the status of the account opener. In assessing the ramifications of a procedural irregularity or misapplication, it is imperative to consider the legislative intent underpinning the relevant statute. Sections 7 and 21 of the Anti-Money Laundering Act, 2010 embodies a consistent framework to counteract money laundering and penalize non-compliant organizations (known as reporting entities) that neglect their duty to report suspicious transactions.

> 7. Procedure and manner of furnishing information by reporting entities.—
>
> (1) Every reporting entity shall file with FMU, to the extent and in the manner prescribed by the

FMU, Report of Suspicious Transaction conducted or attempted by, at or through such reporting entity, if it knows, suspects or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part,-

(a) involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;

(b) is designed to evade any requirements of this Act;

(c) has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or

(d) involves financing of terrorism, including fund collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism: Provided that STR shall be filed by the reporting entity with the FMU promptly.

(2) Any government agency, autonomous body, oversight body for SRB, AML/CFT11 regulatory authority, domestic or foreign, may share intelligence or report their suspicions within the meaning of STR12 or CTR to FMU in normal course of their business and the protection provided under section 12 shall be available to such agency, body or authority.

(3) All CTRs shall, to the extent and in the manner prescribed by the FMU, be filed by the reporting entities with the FMU immediately, but not later

than seven working days, after the respective currency transaction.

(4) Every reporting entity shall keep and maintain all record related to STRs13 and CTRs filed by it for a period of at least ten14 years after reporting of transaction under sub-sections (1), (2) and (3).

(5) The provisions of this section shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other law or written document.

(6) Notwithstanding anything contained in any other law for the time being in force, any STRs required to be submitted by any person or entity to any investigating or prosecuting agency shall, on the commencement of this Act, be solely and exclusively submitted to FMU to the exclusion of all others.

21. The provision of Section 21 of the ibid Act signify by classifying the ibid Act as cognizable and non-bailable while overriding the Code of Criminal Procedure Code, 1898. It is also settled law and rule of interpretation of statute of an enactment having provision of overriding clause in the statute diminish it as special character of being special law which override the general law. The provision of Section 39 of the Anti-Money Laundering Act, 2010 make its special character of being special law. It is also settled that special law is to be applied to a particular case on the basis of special jurisdiction envisaged in that particular law and provisions of general law stands displaced as held in ***"Neimat Ali Goraya v. Jaffar Abbas"***

(1996 SCMR 826). The same analogy is available in the cases reported as ***"M/s Nooni Traders, Karachi v. Pakistan Civil Aviation Authority", (PLD 2002 Karachi 83), "Smaeel vs. The State", (2010 SCMR 27), "The State v. Fazeelat Bibi" (PLD 2010 Lahore 498), "National Bank of Pakistan v. Emirates Bank International Ltd" (1993 CLC 2009 Karachi and "Saeed Ullah Paracha v. Habib Bank Ltd", (2014 CLD 582 Lahore)***.

22. Looking to the peculiar circumstances of the case, it is observed that the Investigation Officer and his Supervisory Investigation Officer (Deputy Director, FIA Composite Circle) has not only violated the mandatory section 7 of the Money Laundering Act, 2010 but have failed to determine the proceed of crimes as defined under section 2 (xxviii), Anti Money Laundering Act, 2010 which obvious meaning that an accused person must either know that the property is derived from a crime, or the circumstances are such that a reasonable person would suspect that the property to be the proceeds of crime. This subjective standard has flattery ignored by the Federal Investigation Agency (FIA).

23. The objective was never to obstruct or undermine this process by way of technicalities or ostentatious investigation. A comprehensive legal framework is available under the ibid Act with built in ***actus rea*** and such ***actus rea*** is not the act of involvement in the money laundering process, rather than the possession or control or handling of the property itself. The second component ***mens rea*** relates to basic requirement of knowledge or reasonable belief which often involves

hypothetical question of reasonable belief or knowledge is mainly focus to remind and to prevent the person from escaping the liability by claiming ignorance or lack of knowledge at the charge.

24. This discussion is also supported by various provisions Articles of Qanun-e-Shahadat Order, 1984. The Article 23 of the ibid Order states that in the cases where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any of the conspirator with reference to their common intention is considered a relevant fact and such person must be compelled under Article 122 of ibid Order obligates that the burden to prove such fact that is especially within the knowledge of a person. It is his or their responsibility to provide tangible evidence or plausible explanation to negate the allegations of prosecution by creating doubt about his or her involvement in the offence.

25. One should remind that the Anti-Money Laundering is ***jus cogens*** to encounter and cater the challenges of modern world and its developments in respect of financial crimes, misappropriation, embezzlement and it provide comprehensive organizational structure and complete legal framework. The Anti-money laundering laws are unique it has designed to combat the concealment of illegally obtained funds by making them appear and disclose the legitimate, and it has often involved specific legal frameworks and penalties.

26. The Money Laundering is an independent offence solely based on “predicate offence”. Furthermore, a special jurisdiction has

given to prosecute and try as enumerated under sections 20 and 21(2) of the ibid Act and therefore registration of a separate FIR under the ibid Act, 2010 is essential course work for the Investigation Agency, after being declared as "cognizable" offence vide amendment Act No.XXX dated 24.09.2020.

27. A legal question that in the light of ***"Sugra Bibi v. The State",*** (***PLD 2018 SC 595)***, the very registration of second FIR on the basis of same transaction is not permissible. However, where more than one version for same occurrence committed by different persons have to be considered as one transaction and to be registered in one FIR, according to the essence of Apex Court's rule, registration of second or another FIR is not permissible. The same analogy has also applied for the doctrine of cross version concept and it is the spirit of Sugra Bibi case (supra) that cross version must be recorded in very first FIR which has ultimately verged the way of registration of another or more than one FIR.

28. In stark contrast, the provisions of Anti-Money Laundering Act, 2010 enunciated the concept of "predicate offence". A Predicate means "something said of a subject" derived from Latin Language "predicare" which means to proclaims or make known. In financial context, any crime that generates monetary proceeds which include assets and properties. Predicate Offence means a crime that is component of or serves as the foundation for a more complex criminal activity relating to the funds or assets and such funds or assets that are generated or monetary transform or convert into some other form of assets

or properties which include movable or immovable and are being used in subsequent crime of Money Laundering.

29. Therefore, being special enactment and depending upon the primary offence of another statute, the embargo of rule laid down in Sugra Bibi (supra) does not apply to the cases cognizable under the Anti-Money Laundering Act, 2010. The Money Laundering Act, 2010 is not self-executing statutes and the starting point or line of action or undertaking based upon offence of other statute(s).

30. The matter of greatest moment considered as its support upon the bottom of other statutes and has differently treated and affirmed as separate crime. The Commission of offence of other statutes are main ingredient to active the statute of Anti-Money Laundering Act, 2010. In consequence, the restrictions that no subsequent FIR does not apply even the proximity of time or place or continuity of action or common design or motive collectively comprehensive as “same transaction” has also extended different meaning other than traditional approach of the ordinary statute as has been explained under Section 39 of the ibid Act having overriding effect and being non-obstante clause. Therefore, without the commission of a predicate offence there could be no offence of money laundering. Reliance is placed on ***“Justice Qazi Faez Isa vs. The President of Pakistan” (PLD 2021 SC 1)***

> “39. Act to have overriding effect. (1) Subject to subsection (2), the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. (2) The provisions of this Act shall be in addition to, and not in derogation of,

> the Anti-Narcotics Force Act, 1997 (III of 1997), the Control of Narcotics Substances Act, 1997 (XXV of 1997), the Anti-Terrorism Act, 1997 (XXVII of 1997) and the National Accountability Ordinance, 1999 (XVIII of 1999) and any other law relating to predicate offences."

31. To grasp the reasonableness the principles laid down by the Supreme Court of Pakistan with regard to the FIR where no offence is made out or no authority to register criminal cases as held in ***"Muhammad Abbasi v. S.H.O. Bhara Kahu" PLD 2010 SC 969, "Col. Shah Sadiq v. Muhammad Ashiq", (2006 SCMR 276), "Rana Shahid Ahmad Khan v. Tanveer", "D.G. FIA v. Kamran Iqbal" (2016 SCMR 447), "Miraj Khan v. Gul Ahmed" (2000 SCMR 122), "A. Habib Ahmad v. M.K.G. Scott Christian", (PLD 1992 SC 353),*** do not apply to the cases which are prosecuted or try under the Anti-Money Laundering Act, 2010. To make it more convenient, it is quite possible that a person prosecuted for the scheduled offence is different from a person prosecuted for the offence under the Anti Money Laundering Act, 2010. For example; Mr. X may be a person who is liable to be prosecuted for schedule offence. In perpetrating this offence, Mr. X may have been paid a certain amount of **money**. This **money** is ultimately traced to Mr. Y, who is charged with the same schedule offence AND he can also charge with possession of the proceeds of crime.

32. The Federal Government is responsible for appointing an administrator for receiving and managing the confiscated property. According to section 11 of the Anti-Money Laundering Act, 2010, the administrator also ensures the disposal of such property. Although some procedure is

provided in section 11 of the AMLA for managing the forfeited properties.

33. The Offences in Respect of Banks (Special Courts) Ordinance 1984 provides for the establishment of special courts dealing with banking offences. In respect of scheduled offences to be tried by the special banking court, the Offences in Respect of Banks (Special Courts) Ordinance 1984 provide that the scheduled offences must exclusively be tried through a special court. Section 2 (d) of the Offences in Respect of Banks (Special Courts) Ordinance 1984 defines the scheduled offence as specified in its first schedule. However, the AMLA is not specified as a scheduled offence in the first schedule of the Offences of the Respect of Banks (Special Courts) Ordinance 1984, therefore, banking courts have no jurisdiction in the AMLA cases.

34. The IO is not obliged to limit investigation to the bald assertions made in the FIR and then lead evidence to that extent only. In other words, his job is to discover the truth and reality of the version jotted down in an FIR. However, the Investigation Officer has failed to recover the crime proceeds as mentioned at paragraph 1 and 2 hereinabove. Reference may be made to Rule 25.3 (3) of the Police Rules which state:

> **"25.2 Powers to Investigating Officers.-**
>
> (1) [...]
> (2) [...]
> (3) It is duty of an investigating officer to find out the truth of matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He

shall not commit himself prematurely to any view of the facts for or against any person."

35. <u>Concept of Bail</u>

The provision for bail goes back to Magna Carta[1] itself. Clause 39, which was, at that time, written in Latin, is translated as follows:

> "No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." It is well known that Magna Carta, which was wrung out of King John by the barons on the 15th of June, 1215, was annulled by Pope Innocent III in August of that very year. King John died one year later, leaving the throne to his 9 year old son, Henry III. It is in the reign of this pious King and his son, Edward I, that Magna Carta was recognized by kingly authority. In fact, by the statutes of Westminster of 1275, King Edward I repeated the injunction contained in clause 39 of Magna Carta. However, when it came to the reign of the Stuarts, who believed that they were kings on earth as a matter of divine right, a struggle ensued between Parliament and King Charles I. This led to another great milestone in the history of England called the Petition of Right of 1628. Moved by the hostility to the Duke of Buckingham, the House of Commons denied King Charles I the means to conduct military operations abroad. The King was unwilling to give up his military ambition and resorted to the expedient of a forced loan to finance it. A number

---

[1] **https://www.britannica.com/topic/Magna-Carta**

> of those subject to the imposition declined to pay, and some were imprisoned; among them were those who became famous as “the Five Knights”. Each of them sought a writ of habeas corpus to secure his release. One of the Knights, Sir Thomas Darnel, gave up the fight, but the other four fought on. The King’s Bench, headed by the Chief Justice, made an order sending the knights back to prison. The Chief Justice’s order was, in fact, a provisional refusal of bail. Parliament being displeased with this, invoked Magna Carta and the statutes of Westminster, and thus it came about that the Petition of Right was presented and adopted by the Lords and a reluctant King. Charles I reluctantly accepted this Petition of Right stating, “let right be done as is desired by the petition”. Among other things, the Petition had prayed that no free man should be imprisoned or detained, except by authority of law.

36. In Bushel’s case [2], decided in 1670, Chief Justice Sir John Vaughan was able to state that, “the writ of habeas corpus is now the most usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it.” It is cases like these that led to the next great milestone of English history, namely the Habeas Corpus Act of 1679.[3] This Act recited that many of the King’s subjects have been long detained in prison in cases where, by law, they should have been set free on bail. The Act provided for a habeas corpus procedure which plugged legal loopholes and even made the King’s Bench Judges subject to penalties for non-compliance.

---

[2] **https://constitution.org/1-History/trials/bushell/bushell.htm**

[3] **https://www.legislation.gov.uk/aep/Cha2/31/2**

37. The next great milestone in English history is the Bill of Rights of 1689[4], which was accepted by the only Dutch monarch that England ever had, King William III, who reigned jointly with his wife Queen Mary II. It is in this document that the expression "excessive bail ought not to be required…." first appears in Chapter 2, clause 10.

38. The clause 39 of Magna Carta was subsequently extended to pre-trial imprisonment, so that persons could be enlarged on bail to secure their attendance for the ensuing trial. It may only be added that one century after the Bill of Rights, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution which expressly states that, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

39. In Sub-Continent, the ***"K.N. Joglekar v. Emperor" (AIR 1931 All 504 : 33 Cri LJ 94)*** it was observed, while dealing with Section 498 of the Code, it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously.

---

[4]https://www.parliament.uk/about/livingheritage/evolutionofparliament/parliamentaryauth ority/revolution/collections1/collections-glorious-revolution/billofrights/

40. The principle enunciated from various provisions of the Criminal Procedure Code that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

41. The concept of Bail has been highlighted by the Hon'ble Supreme Court in a case of ***Muhammad Taimur vs Chairman, National Accountability Bureau NAB Headquarters, Islamabad and others (2023 SCMR 1093)***. The relevant portion of the said case law is reproduced hereunder:

> "3. It is settled law that bail cannot be withheld as a punishment. Moreover, the conviction and incarceration of a person who is ultimately found guilty upon conclusion of trial can repair the wrong caused by erroneously extending the relief of interim bail but, no satisfactory reparation can be offered to a person who has been wrongly accused for unjustified incarcerationat any stage of the case, if in the end a verdict of acquittal is handed down[1]. It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any A rider or condition that would render the concession of bail granted by the court as ineffective or redundant[2]. Bail is one of the most important elements of the scheme of criminal law

and its consideration is premised on the principle that an accused is presumed to be innocent until proven guilty. The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as earning a livelihood or taking care of the needs of the family. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("Cr.P.C.") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution. The conditions described under section 499 are ordinarily sufficient to guarantee the presence of an accused before a court during the trial proceedings. Nonetheless, the court may refuse grant of bail or make it subject to conditions in order to regulate the conductat any stage of the case, if in the end a verdict of acquittal is handed down[1]. It is equally settled law that when the court comes to the conclusion that the accused is entitled to be released on bail then in such eventuality the grant of bail cannot be made subject to any A rider or condition that would render the concession of bail granted by the court as ineffective or redundant[2]. Bail is one of the most important elements of the scheme of criminal law and its consideration is premised on the principle that an accused is presumed to be innocent until proven guilty. The primary purpose of granting bail is to ensure attendance of an accused before the court. It also enables the accused, who is presumed to be innocent, to pursue normal activities which are essential for life such as

earning a livelihood or taking care of the needs of the family. When a court is satisfied that a case for grant of bail has been made out then refusal to exercise discretion in favour of releasing the accused, subject to conditions described under section 499 of the Criminal Procedure Code, 1898 ("Cr.P.C.") would not be in conformity with the right to liberty and the fundamental rights guaranteed under the Constitution. The conditions described under section 499 are ordinarily sufficient to guarantee the presence of an accused before a court during the trial proceedings. Nonetheless, the court may refuse grant of bail or make it subject to conditions in order to regulate the conduct or movement of an accused. A court, for example, may be satisfied that, if released on bail, the accused would abscond or that there exists a likelihood of tampering with the evidence or influencing the witnesses. In such eventualities the court must exercise its discretion with care and caution, by balancing the scales of justice and equity. Even if bail is to be granted subject to conditions then they must not be unreasonable, disproportionate or C excessive. The foundational principles of criminal law are the presumption of innocence of an accused and that bail must not be unjustifiably withheld because it then operates as a punishment before being convicted upon conclusion of the trial. The unnecessary and unjustified incarceration of an under trial prisoner simultaneously becomes a burden on the taxpayers and the already overcrowded prisons."

42. Bail would be denied on grounds germane to the scheduled or predicate offence, whereas the person prosecuted would ultimately be punished for completely different offence namely

money laundering. This, again, is laying down of a condition which has no nexus with the offence of **money laundering** at all, and a person who may prove that there are reasonable grounds for believing that he is not guilty of the offence of **money laundering** may yet be denied bail, because he is unable to prove that there are reasonable grounds for believing that he is not guilty of the scheduled or predicate offence. This would again lead to a manifestly arbitrary, discriminatory and unjust result which would invalidate the said provision of law.

43. The procedure for depriving a person of his life and personal liberty must be eminently just, reasonable and fair and if challenged before the court it is for the court to determine whether such procedure is reasonable, just and fair and if the court finds that it is not so, the court will strike down the same. Indeed, in a criminal trial, the principle of innocence of the accused/offender is regarded as a human right —However, that presumption can be interdicted by a law that statutory provisions regarding presumptions are nothing but rule of evidence. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as the doctrine of presumption would not impair it.

44. The traditional Rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty. The question whether the burden on the accused is a legal burden or an evidentiary burden, would depend on the statute and its purport and

object. Indeed, it must pass the test of the doctrine of proportionality. In any case, as the burden on the accused would be only an evidentiary burden, it can be discharged by the accused by producing evidence regarding the facts within his personal knowledge.

45. It is, thus, clear that the power invested in the official(s) is one for conducting inquiry into the matters relevant for ascertaining the commission of crime and the existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Federal Government. The expression 'possession', it is held, consists of two elements. First, it refers to corpus of physical control and second it refers to the animus or intent which has reference to exercise of self-control. If the **proceeds** of **crime** are in dominion and control of a third person, and not in the dominion and control of the person charged /Applicants, it would be a different matter, when an accused, though not in possession, is charged for beneficent or use, concealment, or acquisition of the **proceeds** of the **crime**, or projects or claims the **proceeds** of **crime** as untainted property.

46. The Investigation Officer or his Deputy Director failed to produce essential documentary proofs of manipulation, further failed to recover crime proceeds and tried to indiscernible the crime proceeds having more than 76 Crore rupees of Public Exchequer. The relevant column of challan/Charge sheet is also silent as required under section 173 of the Code of

Criminal Procedure, 1898 for taking cognizance of the offence. The description of —case property is required under the Police Rules, 1934 and it ought to be mentioned at Column No.6 of the Charge Sheet/Challan/Police Report. The guidance can conveniently be taken from the Hon'ble Supreme Court as held in case ***"Ahmed Ali & another vs. The State" (Criminal Appeal No.48 of 2021).*** The relevant portion is re-produced:

> "Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tempered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court."

47. The reason of enumerated analogy is the scheme of law which provides full mechanism at every form of criminal case. For instance:

a. Case Property is existing[5]

b. Case property is not existing[6]

---

[5] The IO is required to mention in Column No.6 of Police Report/Charge Sheet under section 173 Cr.P.C. Any violation term it defective investigation. The action can be taken against the IO under section 166 or 186(3) PPC. 37 See Section 3(a) of the Money Laundering Act, 2010, Section 5(da) & (q) of National Accountability Ordinance, 1999,

[6] The IO is required to mentioned in Column No.6 of Police Report/Charge with conclusive views that allegations are false or untenable. This action is backed by section 182 PPC.

c. Case property was existed but removed or converted[7] or destroyed[8]

d. Case property is or was existing but avoidable circumstances[9] prevented the Investigation Officer. For instance; (i) Accused is Absconder (ii) Accused has obtained Bail (iii) Remand could not procured etc

It cannot be casually ignored while looking oppositely as law prescribed stern punishment for the defective investigation i.e. breach of duties,[10] false investigation or without diligence,[11] greediness or malafides or misconduct[12] of the Investigation Officer and even he shall be punished with imprisonment.

48. Interestingly, the Investigation Officer has zealously implicated the Applicant and arrested the Applicant and obtained the remand. However, I.O. has failed to recover the alleged bank Account opening form, its KYC, cheque books from the possession of the Applicant. The I.O. has failed to secure

---

[7] The IO is required to mentioned in Column No.6 of Police Report/Charge with addition of theft or stolen provision. This action is backed by sections 380, 381,411,412 or 414 Pakistan Panel Code, 1860 readwith its section 201.

[8] The IO is required to mention in Column No.6 of Police report/Charge Sheet. This action is backed by section 201 & 202 PPC.

[9] The IO is required to mentioned in Column No.6 of Police Report/Charge sheet and issue notice to the Accused or any relevant person for production of case property. This action is backed by Section 160 Cr.P.C. and its violation is again an offence under section 174 and 175 PPC. Additionally, a ground for invoking Section 497(5) Criminal Procedure Code, 1898.

[10] Section 27 of the Anti-Terrorism Act, 1997, provides that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court to punish the delinquent officers.

[11] Section 22 of the Anti-Rape (Investigation and Trial) Act, 2021, also provides penal actions against public servant entrusted to investigate scheduled offences if he fails to carry out the investigation properly or diligently or causes the conduct of false investigation.

[12] See Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988 and

Articles 4 & 155 of the Police Order 2002, also mandates that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance;

signature of the Applicants to get it comparison done from cross record maintained with Bank where according to the FIA embezzled amount was credited and according to the applicant through his forged signature. Even the I.O. has not recovered the embezzled amount from the custody of both Applicants and/or on their pointation under rule of discovery. The Investigation Officer have made a hackneyed practice to arrest the Accused and obtain remand which generally alleged that it has obtained for malafide intention and ulterior motives as appear in the present case. The FIA is a special force and its function is regulated under the ibid Act, 1974. Unlike District Police, the registration of FIR is always depending upon the preliminary inquiry and recording of statements and careful examination of record.

49. Astonishingly, neither the end user culprits, who have obtained such embezzled amount, arrested nor the looted money of HESCO have been recovered by the Investigation Officer and it seems that Investigation Officer and his Supervisor die heartedly interested to arrest the Accused and to obtain physical remand for the best reason known to him and it should be known to the head of department i.e. Director General, FIA Headquarters, Islamabad.

50. Prima facie, there is lack of clarity in assignment of role, failure to recover crime proceeds and any direct or indirect connection of the Applicants. Furthermore, if the names of the Applicants are used in fake account, the Investigation Officer has also failed to bring the actual culprit in his investigation.

51. Additionally, it seems that the amount credited in the account of Applicants was withdrawn on different dates by different person. The Investigation Officer also failed to investigate this aspect so also bank officials.

52. Mens rea for turning the prosecution action into a criminal offence is lacking in the case of Applicants especially when the Applicants come with plea that they are simply employees in DHA, Karachi and their names were used which oppositely may strengthen the case of prosecution in case it could have had handled carefully. Reliance on cases of ***"Maj. (Retd.) Tariq Javed Afridi v. The State" (PLD 2002 Lahore 233), "The State and others v. M. Idrees Ghauri and others", (2008 SCMR 1118), "M. Siddique-ul-Farooque v. The State", (PLD 2002 Karachi 24), "Wahid Bakhsh Baloch v. The State" (2014 SCMR 985), "Mansur-ul-Haque v. Government of Pakistan", (PLD 2008 SC 166) and "Pir Mazharul Haq and others v. The State through Chief Ehtesab Commissioner, Islamabad" (PLD 2005 SC 63).***

53. The rule of consistency is also attracted in the case of Applicants as the bail has already been granted to the co-accused when comparatively the case of Applicants is on better footings.

54. These are the reasons of my short Order[s] for grant of bail dated 25.03.2025. Suffice to observe that the trial Court will not influence with the findings on facts recorded in the instant order which are tentative in nature and the trial Court shall decide the case on the basis of evidence adduce by the prosecution and in accordance with law.

55. Let the copy of this Order be sent to the Secretary Ministry of Interior, Islamabad and DG, FIA, Islamabad for necessary information, general guidelines and so also for a policy regarding crime proceeds as discussed at Paragraph-8, 9, 12, 13, 20 and 23.

J U D G E

Ahmed/Pa,