

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail. Appln. No.S- 638 of 2020

For hearing of bail application

Applicant: Mumtaz Ali Kalwar, through Ms. Amber Iqbal Advocate

Respondent: The State through Mr.Aftab Ahmed Shar, Additional PG for the State

Date of hearing: 13.11.2020

Date of decision: 13.11.2020

ORDER

Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicant/accused Mumtaz Ali S/o Muhammad Pathan, Kalwar, seeks pre-arrest bail in Crime No.02/2020 of Police Station, Anti-Corruption Establishment Sukkur for offences punishable under Sections 161, 466, 468, 471 and 34 PPC R/w Section 5(2) Act-II of 1947.

2. Precisely stated the facts of the case are that complainant Maqsood Ahmed Soomro lodged the FIR on behalf of State at Police Station, Anti-Corruption Establishment, Sukkur, are that the present applicant/accused being Tapedar of Deh Old Sukkur, Taluka New Sukkur maintained the entry No.91 dated 17.12.2002 in the Revenue record, on the basis of managed entry No.54 of Survey No.586 (4-00) Acres in form VII-B, while mutating the foti khata of late Ghulam

Rasool in the name of legal-heirs of i.e. accused Noor Ahmed Noonari, Ghulam Muhammad Noonari and others which was counter-signed by the co-accused Aijaz Ali Halepoto being Mukhtiarka, Taluka (New) Sukkur, as such caused transfer of State Land fraudulently and managed bogus revenue record, as such the accused persons in connivance with each other have caused huge loss to the Government exchequer, hence the FIR was lodged.

3. The applicant/accused on having been refused pre-arrest bail by the Court of learned Special Judge, Anti-Corruption (Provincial) Sukkur vide dated 15.09.2020, has preferred the instant bail application before this Court.

4. It is contended by learned counsel for the applicant/accused that applicant being innocent has been involved in this case falsely by the Anti-Corruption police; that there is delay of Eighteen (18) years in lodgment of the FIR, for which no plausible explanation has been furnished by the complainant, hence false implication of the applicant/accused cannot be ruled-out; that prior to this enquiry was conducted in Complaint No.55/2009 of the same offence and after enquiry, the enquiry Officer came to the conclusion that no offence has been committed, hence such report was filed which was approved by the competent authority, whereas, the complainant with malafide intentions has suppressed the above fact regarding earlier enquiry; that the co-accused Aijaz Ali Halepoto and Noor

Ahmed has been granted bail, whereas, the case of present applicant/accused is on same footings, hence he also deserves for grant of pre-arrest bail; that the alleged entry which was maintained by the present applicant/accused was immediately rectified by cancelling the same within a period of seven days and no such transaction has been made, as such no loss was caused to any party; that the applicant/accused is neither previous convict nor hardened or desperate criminal; that the complainant / Investigating Officer did not call the present applicant/accused during enquiry which is in violation of mandatory provisions of Rules; that the case has been challaned and the applicant is no more required for further inquiry. She lastly prayed that the interim pre-arrest bail granted to the applicant/accused may be confirmed on the same terms and conditions.

5. Learned Additional PG for the State has opposed for grant of pre-arrest bail to the applicant by contending that he has maintained a false entry in the record of rights in respect of land, as such he has committed a criminal offence; that there is no malafides on the part of the Anti-Corruption police to implicate the applicant/accused in the present offence; that the applicant is fully involved in the commission of the offence because the State land has been transferred, hence a huge loss has been caused to the Government

Exchequer due to act of the applicant/accused, therefore, he is not entitled for grant of extra-ordinary concession of pre-arrest bail.

6. I have heard the learned counsel for the applicant/accused and learned Additional PG for the State and perused the record. Admittedly, there is delay of about 18 (eighteen) years in lodgment of the FIR, for which no plausible explanation has been furnished by the complainant. Furthermore, a like nature Complaint No.55/2009 on the same subject-matter was filed and after enquiry, the same was closed vide Order dated 15.07.2010 by the competent authority. Learned counsel for the applicant placed on record copy of enquiry report dated 15.06.2010 furnished by Circle Officer, Anti-Corruption Establishment, Sukkur as well as Order of Deputy Director, Anti-Corruption Establishment Sukkur. The allegation against the present applicant/accused is that he maintained entry No.91 in the Revenue record on 17.12.2002 thereby changed the *foti khata* of deceased Ghulam Rasool in favour of his legal-heirs in respect of S.No.586 (4-00) Acres in Form VII-B, whereas, the said entry was later-on rectified / cancelled on 25.12.2002 within a period of seven days. No such transaction of whatsoever nature has been made on the basis of said entry, which was rectified / cancelled by the applicant/accused immediately within a period of seven days. There is no possibility of tampering with the prosecution evidence, as the entire material available with the prosecution is documentary in

nature. The co-accused Noor Ahmed and Aijaz Ali Halepoto have already been granted bail. The alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. The case has been challaned and the applicant/accused is no more required for further investigation. In these circumstances, the learned counsel for the applicant/accused has rightly contended that the applicant/accused is entitled to grant of bail on point of further enquiry.

7. In view of above, the interim pre-arrest bail granted to the applicant/accused on 29.10.2020 is hereby confirmed on same terms and conditions. He is directed to face the trial regularly till final disposal of the case. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

8. The bail application stands disposed of accordingly.

Judge