

IN THE HIGH COURT OF SINDH AT KARACHI

Cr.B.A. No.834 of 2016

APPLICANT : Abdul Ghaffar S/o. Shamsuddin, through
Mr. Imtiaz Ali Awan, advocate

RESPONDENT : The State, through Ms. Rehana Akhtar,
A.P.G

Date of Hearing : 04-07-2016

Date of Order : 04-07-2016

ORDER

Muhammad Humayon Khan, J:-After rejection of his earlier bail application, vide order dated 27.05.2016, passed by the learned IVth Additional Sessions Judge, Karachi- East in Bail Application No. 1082 of 2016, the applicant/ accused Abdul Ghaffar S/o. Shamsuddin has approached this Court seeking post-arrest bail in Crime No.181 of 2016, registered at Police Station Landhi, Karachi, under Sections 468, 471, 420,506 and 34 P.P.C.

2. Brief stated, the facts of prosecution case are that on 03.05.2016, complainant Muhammad Naeem lodged aforementioned F.I.R.alleging therein that on 24-8-2014, he had paid Rs.3,00,000/- as advance for his appointment as Junior clerk in Education Department to Abdul Ghaffar (present applicant), Zulfiquar and Shamsuddin, the brother and father of the applicant respectively, who delivered him appointment and joining letters and; thereafter, he paid further an amount of Rs. 2,00,000/- on their demand, but when he approached Matric Board, Education Department, Karachi for joining his duty, he was informed that his appointment as well as joining letters were forged. Hence, all three

persons named above committed fraud and cheating and when he demanded his amount, they threatened him for causing death.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and he has falsely been implicated in this case by the complainant party due to inimical terms between the parties. He has further contended that no reasonable ground exists to believe that the applicant has committed any offence punishable for death or imprisonment for life or imprisonment for ten years; therefore, the applicant is entitled for the concession of bail. He added that section 420 P.P.C. is bailable, while sections 468 and 471 are non-cognizable and section 506 (ii) P.P.C. does not fall within the prohibitory clause of section 497 Cr. P.C. and there is inordinate delay of one year and nine months in lodging F.I.R. and no plausible explanation is available in this regard; therefore, the applicant/ accused is entitled to the concession of bail on this score alone. In support of his contentions, the learned counsel has relied upon case of Ghulam Hussain v. The State, reported as **2002 YLR 621**.

4. Conversely, learned A.P.G. has opposed this application on the grounds that the applicant/accused is nominated in the F.I.R. by name with specific role along with co-accused, who received an amount of Rs.5,00,000/- from complainant by forging appointment and joining letters for the purpose of cheating him; therefore, he is not entitled for the concession of bail.

5. I have heard the learned counsel for the applicant, learned A.P.G appearing for the State, and perused the material available on record.

6. Section 420 P.P.C. is bailable, while sections 468 and 471 are non-cognizable and section 506 P.P.C. does not fall within the prohibitory clause of section 497 Cr. P.C. Challan has already been submitted by the police; hence the applicant is more required by the police for further investigation. Admittedly there is unexplained delay of one year and nine months in lodging of F.I.R., this fact alone renders the case against applicant one of further inquiry in terms of sub-section (2) of Section 497 Cr. P.C.

7. The provisions of Section 497(1) Cr.P.C. are not punitive in nature and in the absence of any exceptional circumstances, withholding of post-arrest bail is not the intention of law. There is no concept of punishment before judgment in the criminal law of the land. The question of grant or refusal of bail is to be determined judiciously having regard to the facts and circumstances of the case. When the alleged offence is bailable or does not fall within the prohibitory clause of section 497 Cr.P.C. or when the Court arrives at the conclusion that the matter requires further enquiry, it shall grant bail to the accused.

8. By now the principles of granting of bail in such like cases are well settled. In the case of Zafar Iqbal Vs Muhammad Anwar & others (2009 SCMR 1488) the Honourable Supreme Court of Pakistan has elucidated the principles for considering the grant of bail that where the offences fall within the non-prohibitory clause, the granting of bail has to be considered favorably as a rule, and may be declined in exceptional cases. Examples, though not exhaustive, of such extra ordinary and exceptional cases have further been listed as under;

- (i) Whether there is likelihood of abscondance of the accused.

- (ii) Where there is apprehension of the accused tampering with the prosecution evidence.
- (iii) Where there is danger of the offence being repeated, if the accused is released on bail.and
- (iv) Where the accused is a previous convict.

9. It has not been shown by the prosecution if the case of applicant falls under the aforementioned exceptions to the rule for the grant of bail. I, therefore, admit the applicant to bail subject to his furnishing solvent surety in the sum of Rs. 1,00,000/- (Rupees One Hundred Thousand only) and P.R. bond in the like amount to the satisfaction of the nazir of this Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits, and if the applicant in any manner try to misuse the concession of bail, it would be opened for the trial Court to cancel his bail after issuing him requisite notice.

11. Above are the reasons of my short order dated 04.07.2016.

JUDGE