

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Naimatullah Phulpoto
Mr. Justice Zulfiqar Ahmad Khan

Cr. Bail Application No.1614 of 2017

[Syed Muhammad Ali Abidi v. the State]

Applicant : Syed Muhammad Ali Abidi through
Mr. Haider Imam Rizvi Advocate

Respondent : The State through Mr. Ashfaq Rafiq
Janjua, Assistant Attorney General
along with I.O/Inspector Fareed
Ahmed Khan of FIA CBC, Karachi

Date of Hearing : 31.01.2018

Date of Announcement : 09.02.2018

ORDER

Zulfiqar Ahmad Khan, J. Through this bail application, the Applicant seeks post arrest bail in FIR No. 08 of 2016 registered under Sections 403, 409, 420, 468, 471, 477-A & 109 PPC read with Ordinance No.IX of 1984 at PS FIA, CBC, Karachi.

2. According to the contents of the FIR, two written Complaints dated 08.01.2015 and 06.05.2015 regarding fraudulent transactions of Third Party's Dividend Warrants and Shares Encashment were registered vide Enquiry No.01 of 2015 at CCC FIA and Enquiry No.30 of 2015 at CBC, FIA, Karachi by Faisal Javaid, Regional Head Fraud & Risk Management Unit, NIB Bank and Muhammad Imran Kalia (a private person). Later on, due to the nature of crime, Enquiry No.01 of 2015 was amalgamated into Enquiry No.30 of 2015.

3. During the course of enquiry, it transpired that Syed Muhammad Ali Abidi, the then Operation Manager of NIB Bank Jamshed Quarter Branch, Karachi (the present Applicant) with connivance of Humair Ghani, CSO of the same Bank Branch, alongwith Muhammad Hanif and Muhammad Yousuf (two private

individuals) fraudulently arranged and executed a scheme which entailed collection and encasement of Third Party's Dividend Warrants of various companies, and Shares of MCB (Muslim Commercial Bank) for achieving illegal financial gain. For this purpose, the accused/Applicant opened a fake and bogus Account bearing No.12739052 in NIB Bank, Jamshed Quarter Branch Karachi with the title of Iqbal Hussain/Taqi Hussain (Father/Brother in law of the Applicant). During Enquiry Mr. Iqbal Hussain and Taqi Hussain in their 161 Cr.P.C statements stated that the accused/Applicant Syed Ali Abidi had opened the said account without their consent and permission. As well as he applied their fake signatures for opening and operation of the account. Technical Expert's Report dated 04.05.2015 corroborated connivance of (1) Humair Ghani (2) Muhammad Hanif Ismail and (3) Muhammad Yousif, who fraudulently deposited and encashed those Third Party's Dividend Warrants amounting to Rs.3,524,066/-. Additionally, the Accused/Applicant Syed Muhammad Ali Abidi with the help of above named persons also fraudulently deposited and encashed Third Party's Dividend Warrants of various shareholders amounting to Rs.304,486/- in the account of his mother Bashir Fatima bearing A/c No.9321818 opened at NIB Bank, Hyderi Karachi. Applicant/Syed Muhammad Ali Abidi with the help of accused Muhammad Hanif and Muhammad Yousuf also fraudulently got transferred 16644 shares of MCB Bank originally in the name of different shareholders to the names of Iqbal Hussain/Taqi Hussain (his in-laws) in KASB and got those shares converted into Electronic Shares. Applicant/Syed Muhammad Ali later sold these 16644 electronic shares by using CDC Participant of Iqbal Hussain/Taqi Hussain and got transferred the sale amount of Rs.9,730,000/- in the fake joint account of Iqbal Hussain/Taqi Hussain bearing No.12739052 being maintained in

NIB Bank, Jamshed Quarter Branch, Karachi. All the amounts were encashed, withdrawn through various cheques and pay orders. The money trail of said fake Bank Account also shows an amount of Rs.2,886,000/- received by accused Muhammad Yousuf in his A/c No.192929 at Habib Metropolitan Bank, Bombay Bazaar Branch, Karachi and an amount of Rs.1,400,000/- received by another accused Muhammad Hanif in his A/c No.191023 at the same Bank's Bombay Bazaar Branch. The total amount of Rs.13,558,552/- were withdrawn through various transactions only in the year 2013. After usual investigation challan was submitted against the Accused under above referred sections.

4. Bail application was moved before trial Court and the same was dismissed vide order dated 29.08.2017.

5. In support of the applicant's instant Bail application Mr. Haider Imam Rizvi, learned Advocate by making reference to the 161 Cr.P.C statements of PW-2 (Iqbal Hussain) and PW-3 (Taqi Hussain) recorded before the Investigating Officer vis-à-vis the evidence of these two witnesses as recorded by the learned trial Court, by minutely dissecting these two pieces of evidence tried to make out a case that these witnesses have resiled from their 161 Statements. Thus making it a fit case of further inquiry, paving the way for the grant of bail. He, as second leg of his arguments, placed reliance on the "Rule of Consistency" and submitted that the case of the Applicant is identical to the case of Nasir Ali Haroon (Branch Manager Habib Metropolitan Bank Ltd., Bombay Bazaar Branch) who has been granted bail by the trial Court. He placed reliance on 2016 SCMR 907 (Abid v. the State and others), 2016 YLR 2507 (Zamir Ahmed and 2 others v. the State) and 2016 YLR 1163 (Nasrullah Panhwar and another v. the State) in support of his client's instant application.

6. In contrast, Mr. Ashfaq Rafiq Janjua, Assistant Attorney General vehemently opposed instant application and distinguished that the role of the Accused/Applicant is totally different from Nasir Ali Haroon, accordingly benefit of Rule of Consistency could not be given to the Applicant. He also submitted that the Applicant/Accused was fully implicated by the witnesses.

7. We have considered the submissions of the learned counsel for the Applicant and learned Assistant Attorney General and glanced over the record.

8. PW-2 (Iqbal Hussain) and PW-3 (Taqi Hussain) have fully implicated the Applicant/accused in commission of offence. Both PWs have substantiated the allegation before trial Court that it was the Applicant/accused who opened fake Account bearing No.12739052 at NIB Bank, Jamshed Quarter Branch Karachi in their names without their knowledge and consent, as well as, it was the Applicant/accused who even forged their signatures to open/operate the said account, whose entire benefit was reaped by the Applicant/accused.

9. With regards the role of the Applicant viz. a viz. that of Nasir Ali Haroon, making a sweeping statement that these roles are identical, and since bail was granted to Nasir Ali Haroon, following the Rule of Consistency, bail should also be granted to the Applicant is devoid of legal force. A comparison of roles of these two individuals in prosecution case shows that it was the Applicant who is the principal accused of the alleged scheme of depriving poor shareholders from the benefit arising out of their shareholding in the form of Dividend Warrants and who largely pocketed those gains through a deceitfully conceived mechanism where at the first hand, with the active connivance of Courier company, the Dividend Warrants were collected, thereafter those were fueled through fake signatures into

the fake accounts opened by the Applicant/accused himself in the name of his in-laws Iqbal Hussain and Taqi Hussain bearing No.12739052 in NIB Jamshed Quarter Branch as well as in the fake account he opened in the name of his mother Bashir Fatima bearing No.9321818 in the Hyderi Branch of the same Bank, where those Dividend Warrants were encashed for the benefit of the Applicant/accused. It was he, who also hatched a scheme to encash 16,644 shares of MCB Bank and got sale proceeds thereof deposited in the account of his in-laws for his personal illegal gains.

10. On the other hand role of Nasir Ali Haroon is only that he opened an account in HMB Bank, Bombay Bazar Branch bearing No.192929, where a fraction and offshoot of the proceeds accumulated in the account fakely opened by the accused in the name of his in-laws in NIB Bank were transferred for the benefit of an individual called Muhammad Hanif. Infact the said account in HMB Bank only facilitated the racket created by the Applicant/accused, where a fraction of the benefit reaped offshooted to the account opened by Nasir Ali Haroon. Thus if no money was fueled in the illegal account opened by the Applicant in the name of his in-laws in NIB Bank, there could have been no possibility for any money to be transferred therefrom to the account opened by Nasir Ali Haroon in HMB Bank.

11. For the reasons mentioned above when it is also observed that the case laws relied upon by the learned counsel for Applicant/accused are distinguishable from the circumstances of the present case thus inapplicable. Also to keep in mind is the fact that considerations for grant or refusal of bail in the cases of offences in Banks are different as compared to ordinary crimes. Nonetheless deeper appreciation of evidence is not permissible at bail stage any way.

12. *Prima facie*, there appear reasonable grounds for believing that Applicant/accused has committed the alleged offence. Consequently, the instant bail application filed by Syed Muhammad Ali Abidi is hereby dismissed. However, the trial Court shall examine Complainant namely M/s. Faisal Jawed and Muhammad Imran Kalia within one month. Applicant/accused if prefers, would be at liberty to repeat the bail application before the trial Court once the evidence of these two witnesses is recorded in the above stipulated time.

13. Needless to mention here that observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the cases of the Applicant/accused on merits.

Judge

Judge