

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.120/2018

Date Order with signature of Judge

For hearing.

14.02.2018.

Mr. Shafqat Zaman advocate for applicant.
Mr. Muhammad Javed K.K. DPG alongwith Inspector Akbar, AHTC,
FIA, Karachi.

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Salahuddin Panhwar, J: On rejection of his bail application by learned trial Court, applicant Muhammad Qasim has approached this Court for grant of post arrest bail in crime No.441/2016, u/s 22(B) of the Emigration Ordinance, 1979 r/w section 489-F Cr.P.C. registered at FIA, AHT Circle, Karachi.

2. Subject FIR was lodged by complainant Ali Salman with the F.I.A that applicant, above named, is his friend and on 24.04.2016 applicant called the complainant and informed him that applicant has 16 saudi employment visas, complainant talked to his friends/relatives and gave a total amount of Rs.17,80,000/- on different occasions to the applicant on his demand through cash/online transaction alongwith passports of his friends/relatives namely Jehanzeb Hassan, Mushtaq Ahmed, Muhammad Khalid, Badshah Khan, Iftikhar Ali, Behzad Ali, Ali Raza, Muhammad Asim Sajjad, Hamid and others for sending them abroad for employment but applicant failed to do so and later, on demand made by complainant for refund of amount, applicant handed over a cheque of Rs.9,00,000/- to complainant which on presentation was bounced.

3. Heard learned counsel for applicant and learned DPG and perused the record.

4. Learned counsel for the applicant contended that the subject cheque is not in name of applicant nor it was issued by him, nor he has any knowledge about the cheque; that the witnesses in their statement under section 161 Cr.P.C. have not implicated the applicant as there was no monetary transaction between them and the applicant. It is further argued that applicant had never demanded or received any money from complainant nor undertook to provide visa for his relatives/friends as alleged; that FIR was lodged by complainant in order to usurp the money of his relatives; that applicant is behind the bars since his arrest and his further detention would not serve any fruitful purpose, even otherwise alleged offence does not fall within the prohibitory clause.

5. On the other hand, the learned DPG while opposing bail, argued that specific role has been assigned to applicant who has received a huge amount from complainant for arranging visas though the applicant was not even authorized overseas employment promoter; applicant is a fugitive from law as complaint was filed by FIA in absentia, later on applicant was arrested and produced before the trial Court.

6. Precisely, the allegations against the applicant / accused are that he deceitfully induced the complainant and others, desirous to work abroad and in this way collected huge sum of money. Neither those, from whom the money was collected, were provided employment nor were returned their money. The prosecution did collect material in shape of bank-statement (s) which *prima facie* establish encashment / withdrawal of amount by the applicant / accused for which he (applicant / accused) has pleaded nothing.

Applicant though took the ground of his involvement by complainant with malafide intentions and ulterior motives but failed to prove any enmity of complainant with him. I may safely add that unfortunate increase in ratio of unemployment in the country is *normally* exploited in name of a promise of employment at abroad. Such temptation *normally* is sufficient to induce and defraud the innocent and rustic *poor* fellows of their valuable properties. The offences where the people are defrauded in names of such like *desires* would not bring the offence within meaning of an *ordinary* offence. The papers do show that the present applicant never responded to repeatedly issued notices, issued by investigating agency rather opted to have a tag of *fugitive* from law. It is a matter of record that complaint was submitted by FIA before the trial Court in absentia; later on applicant was arrested and produced before the trial Court. Such deliberation on part of the applicant / accused would not be sufficient at its own to disentitle the accused from concession of bail but would be a circumstance tilting the scale in favour of prosecution. Guidance is taken from the case of Muhammad Aslam v. State (2016 SCMR 1520) wherein it is held as:-

“3. It may be true that a person absconding after an occurrence and declared as proclaimed Offender **may lose its claim to exercise of discretion in his favour by a court of law** on the basis of propriety but at the same it is equally true that an accused person the case against whom calls for further inquiry is to be admitted to bail as a matter of right. ..”

7. Further, perusal of record shows that complainant and PWs have categorically implicated the applicant/accused with the crime and receiving of amount by him. The *plea* of offence not falling within prohibitory clause of section 497(i) Cr.PC would loose its

application if the complained offence falls within one of the *exceptions* which do include those offences falling within meaning of **offence against society** or impacts thereof appear to have fallen upon public at large. There has been established *least* pleaded no malafide against the complainant and those who involved the applicant / accused in instant offence of defrauding them in name of employment at abroad. It was never a case of mere issuance of a cheque, involving dishonest intention or otherwise rather the cheque is claimed to be issued for returning the amount to all victims. Sufficient material has come on record to connect the applicant with the commission of crime coupled with the fact that he is involved in a heinous nature of crime against society and deprived general public from huge amount of money which alone would be sufficient for dismissal of bail plea of the applicant/accused. Reference may also be made to the case of *Shahid Hussain v. State* (2017 SCMR 616) wherein allegations were similar though temptation was different. It was observed in it as:-

“4. We have gone through the material on record/evidence collected , so far, and are of the considered view that, at the moment the petitioners are well connected with the crime **because no malice or mala fide was attributed to the complainant and other victims, as to why they were falsely implicated in this case, thus this petition deserves out right dismissal and order accordingly.**”

8. In consequence of what has been discussed above, the bail plea of the applicant / accused is hereby dismissed.

JUDGE