

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Criminal Bail Application No.735 of 2018

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| Applicant | Ali Muhammad son of Allah Bux Kandhro. |
| Respondent | The State. |
| Applicant | Through Mr. Nadir Khan Burdi, Advocate. |
| Complainant | Muhammad Din son of Abdul Rehman Through Mr. Abdul Sattar Mahesar, Advocate. |
| Respondent | Through Mr. Abdul Wasey Khan, DAG alongwith I.O. Aijaz Ali, Sub-inspector FIA, Sukkur. |
| Date of hearing | 30.08.2018 |
| Date of announcement of the order | 05.09.2018 <><><><><> |

ORDER

SHAMSUDDIN ABBASI, J. Applicant Ali Muhammad seeks post arrest bail in a case punishable under Sections 409, 420, 468, 471, 34, PPC read with Section 5(2) PCA II-1947 vide FIR No.02 of 2017 registered at FIA, Crime & AHT Circle, Sukkur.

2. FIR in this case has been lodged on 03.02.2017 at 1630 hours whereas the incident is shown to have taken place in the year 2016. Complainant Muhammad Din son of Abdul Rehman has stated that his father Abdul Rehman and other co-owners of agricultural land bearing Survey Nos.284, to 386, 310, 320, 325, 341, 345 to 358, 399, 400, 407 to 412, 1276 to 1278, 1663, 1664, 1749, 1750 and 414, measuring 75 acres, situated at Deh Rafique Mahesar, UC Drib Mehar Shah, Taluka Kingri, District Khairpur, jointly obtained loan on the abovesaid land in the year 2014 and 2015 from Zarai Taraqati Bank Limited {ZTBL}, Pir Jo Goth Branch, against mortgaging the said

property with the bank, despite of that further loans were passed on by the bank on the same land that was already mortgaged with the same branch in favour of real owners, on the basis of six fake pass books containing bogus entries in the revenue record allegedly made and issued by the present applicant while posted as Mukhtiarkar, Kingri, in favour of Imtiaz Ali, Rasheeda Khatoon, Ali Gohar, Mohammad Ibrahim, Abdul Ghafoor and Gulshan with collusion and connivance of officials of revenue department and bank staff by playing fraud, forgery and preparing fake and bogus documents.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred sections against various accused including the present applicant showing him in custody in column No.3 of the challan.

4. It is, inter-alia, contended that the applicant has issued pass books on the basis of entries available in the revenue record, which were kept in the year 1994, hence in view of this background of the matter, further probe within the meaning of sub-section (2) of Section 497, Cr.P.C. is called for. It is next submitted that the applicant is a respectable, responsible and honest officer of advance age, he is near to retirement as well suffering from ailment; the allegation of taking bribe of Rs.100,000/- in lieu of issuance of fake pass books, is totally false and the applicant is behind the bars since 07.11.2017. It is also submitted that first bail application, filed before this Hon'ble Court, was withdrawn on account of availability of fresh grounds after the submission of supplementary challan before the trial Court. Lastly, the learned counsel submits that the alleged offences do not fall within the prohibitory clause of Section 497, Cr.P.C. and in such type of cases grant of bail is a rule and refusal thereof is an exception. In support of his submissions, the learned counsel for the applicant has placed reliance on 2009 P.Cr.L.J. 732, PLD 2011 SC 509, PLD 2008 SC 438, 2016 YLR 2460 and SBLR 2016 Sindh 1377.

5. In contra, the counsel appearing on behalf of the complainant has contended that after rejection of bail application on

merits by the trial Court, the applicant preferred bail application before this Court, which was withdrawn as not pressed and thereafter the applicant has filed second bail application before the trial Court, on the same sets of grounds, which too was dismissed being without any fresh ground. It is next submitted that the applicant is a corrupt and habitual officer; he is involved in many other criminal cases for incorporating fake entries in the revenue record and issuance of fake pass books and so many departmental enquiries are also pending against him. The learned counsel further submits that applicant used to make fake entries in the revenue record and with collusion and connivance of officials of ZTBL and other private persons used to obtain loans whereas in the present case private persons had obtained loans from ZTBL of more than Rupees 07 million, hence he does not deserve concession of bail.

6. The learned DPG, on the other hand, has opposed the bail plea on the ground that in all 19 entries have been made in the revenue record in respect of different lands of more than 900 acres and besides this FIR, another FIR vide Crime No.50 of 2014 was registered against the applicant while an inquiry No.69 of 2017 is also pending against him. It is next submitted that the applicant has issued fake pass books on the basis of which private persons, with collusion and connivance of bank officials, have obtained loan of more than 07 million of rupees from ZTBL causing huge loss to the national exchequer. He further submits that as per record collected by the I.O. an amount of Rs.74,66,699/- (Rupees seventy four lac sixty six thousand six hundred and ninety nine only) is outstanding against loan obtained by co-accused on the basis of six fake pass books alleged issued by the present applicant.

7. Heard learned counsel for applicant as well of complainant and the learned DPG for the State and perused the entire material available on record with their able assistance.

8. Admittedly six pass books were issued by the applicant in favour of Imtiaz Ali, Mst. Rasheeda Khatoon, Ali Gohar, Mohammad Ibrahim, Abdul Ghafoor and Gulshan on the basis of which loan was

obtained from ZTBL Pir Jo Goth Branch with collusion and connivance of bank officials and still an amount of Rs.74,66,699/- (Rupees seventy four lac sixty six thousand six hundred and ninety nine only) is outstanding against co-accused, thereby huge loss was caused to the national exchequer. It is also important to note that the said land was already mortgaged by the elders of the complainant with the said bank. A bare perusal of the orders dated 13.04.2016, 06.12.2014 and 06.03.2017, passed by Assistant Commissioner, Kingri, Additional Deputy Commissioner-I, Khairpur and Additional Commissioner-II, Sukkur respectively, show that entry dated 30.06.1994 in revenue record was a fake one and the said pass books were prepared on 23.12.2014, 20.06.2014, 23.06.2014, 23.07.2014, 23.12.2014 and 20.06.2014 and the entries were kept in the year 2014 showing them to be of 1994 and on the basis of such fake entries six pass books were issued by the applicant, and co-accused with the connivance of officials of ZTBL obtained loan and caused heavy loss to the national exchequer. So far as the plea of seeking bail on medical ground is concerned, the applicant has not filed any application before the learned trial Court to constitute a medical board to determine as to which of the disease is detrimental to his life in jail and simply placing record of hypertension and diabetes is not sufficient to consider bail on medical ground. As to the plea of further inquiry is concerned, the same also found no force because every hypothetical question, which could creep into the mind and which could be resolved only after recording evidence during trial, would not make the case as that of further inquiry. The case of further inquiry would only be made out when data collected by the prosecution was not sufficient to provide reasonable grounds for believing that a prima facie case does not exist against the accused. No evidence of enmity in terms of malafide or ulterior motive is available on record, which might have actuated the complainant to falsely implicate the applicant. At the stage of bail the detailed succession is not necessary but as far as the evidence which is on the surface of record of this case shows that the applicant is prima facie involved in this crime; he is nominated in the FIR and specific role is attributed to him. As regards the case law cited by the learned counsel for the applicant, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct

and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the applicant particularly when it has come on record that the applicant in all kept 19 different entries in revenue record, involving a land of about 900 acres, and an FIR No.50 of 2014 was already registered against the applicant, besides an enquiry is also pending against him. Prima facie, reasonable grounds exist to believe that the applicant has issued six fake pass books in favour of co-accused, who with the connivance of officials of ZTBL, obtained loan and caused heavy loss to the national exchequer. During investigation sufficient material has been collected by the prosecution to show the involvement of the applicant with the commission of offence charged with, which comes outside the ambit of prohibitory clause of Section 497, Cr.P.C. In the mentioned circumstances, we are of the considered view that the learned trial Court has rightly rejected the bail plea of applicant and this Court also found no substance to interfere. The bail application being devoid of merits stands dismissed accordingly. However, the trial Court is directed to expedite the trial and conclude it at an earliest, preferably within a period of three months under intimation to this Court through M.I.T-II.

9. Needless to mention here that the observations made hereinabove are of tentative assessment and the trial Court shall not be influenced by the same while deciding the case(s) of the applicant on merits.

JUDGE

JUDGE

Naeem