

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 538 of 2020

Rehan Khan S/o Fazal Hakeem

vs.

The State

For the Applicant / Accused : Mr. Abdul Rasheed Katpar
Advocate

For the Prosecution / State : Mr. Choudhry Waseem Akhtar
Assistant Attorney General

Mr. Muhammad Shafi
Assistant Director FIA
AHT Circle Karachi

Date of hearing : 24.04.2020

Date of announcement : 24.04.2020

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of Crime / F.I.R. 98 of 2020, registered on 17.03.2020 before P.S. FIA, AHT Circle, Karachi, in respect of offence under Section 17(1) of the Emigration Ordinance, 1979.

2. Learned counsel submits that the earlier plea for bail, by the applicant, was rejected by the Court of Special Judge (Central) II, Karachi in Case No.71 of 2020, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

- a. The allegation levelled against the applicant was that while he was in Iran, on a valid visa, he illegally proceeded to Turkey without any authorization and engaged in illegal employment thereat. Upon return to Pakistan, travelling on an emergency passport, he was detained and remains under trial.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on *inter alia* on the premise that allegations are untrue; the matter is of further inquiry; the alleged offence does not fall within the prohibitory clause; hence, it would be just and proper for the applicant to be enlarged on bail pending conclusion of the trial.

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

The Investigative Officer present submitted that denial of bail in such matters was only warranted in exceptional circumstances. The learned AAG concurred with the observation and submitted that no exceptional circumstances, warranting dismissal, were apparent presently, however, the alleged offence was non-bailable in nature.

- c. The alleged offence admittedly does not fall within the prohibitory clause, non-bailable offences with punishment of 10 years or more, and it is settled law in such matters the grant of bail is the rule and its refusal an exception³. Per the Prosecution, no exception is attracted in the present matter.
- d. The F.I.R. in itself demonstrates that the applicant travelled to Iran on a valid passport, containing the appropriate visa. It would thus appear that the applicant's departure from Pakistan was appropriately sanctioned. The culpability, if any, with respect to the question of travel from Iran to Turkey, and matters ancillary thereto, remains to be considered by the learned trial Court.
- e. Upon tentative assessment of the material⁴ collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence, merits further enquiry⁵, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception⁶.
- f. In addition to the foregoing, the record placed before the Court does not denote any criminal record, of the applicant, in cases of an identical nature or otherwise; no case has been set forth requiring the applicant's presence for investigation; hence, no case is made out warranting the continued incarceration of the applicant.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.15000/- (Rupees Fifteen Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

³ *Tariq Bashir & Others vs. The State* reported as *PLD 1995 Supreme Court 34*.

⁴ *Asif Ayub vs. The State* reported as *2010 SCMR 1735*.

⁵ *Awal Khan & Others vs. The State* reported as *2017 SCMR 538*.

⁶ *Muhammad Shafi vs. The State* reported as *2016 SCMR 1593*; *Nisar Ahmed vs. The State* reported as *2014 SCMR 27*.