

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 610 of 2020

*Abu Bakar Siddiqui*

vs.

*The State*

For the Applicant / Accused : Mr. Ghulam Mustafa  
Advocate

For the Prosecution / State : Mr. Ghulam Akbar  
Assistant Director  
AHTC, FIA, Karachi  
(Investigative Officer)

Date of hearing : 12.05.2020

Date of announcement : 12.05.2020

## ORDER

**Agha Faisal, J.** The applicant seeks post-arrest bail, in respect of F.I.R. 387 of 2019 registered on 13.09.2019 before P.S. FIA, AHT Circle, Karachi, citing offence/s under Section/s 5(2) of the Prevention of Corruption Act 1947, read with Sections 419, 420, 468, 471, 109 P.P.C., Sections 3(2), 13 and 14 of the Foreigners Act 1946 and NADRA Ordinance, 2000.

2. Learned counsel submits that the earlier pleas for bail by the applicant were rejected by the Court of the Special Judge (Central-II), Karachi, in Bail Application 03 of 2020 and in Case No.02 of 2020 respectively, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting<sup>1</sup> through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein<sup>2</sup>, it is observed as follows:

- a. The applicant was arrested at Karachi Airport while allegedly travelling on a fake passport, under an assumed name (Umar Farooq son of Abdul Ghaffar). A scrutiny of his baggage revealed a plethora of his credentials<sup>3</sup> demonstrating that he was a foreign national (Abu Bakar Sidique son of Wahidullah Bhuiyan).
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that the applicant was a bona

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

<sup>2</sup> *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

<sup>3</sup> Details contained in the F.I.R., reproduction whereof is eschewed for the sake of brevity.

fide Pakistani citizen, having previously travelled on the passport in question, and that this was a case of further inquiry.

The Investigative officer represented the Prosecution and asserted that the applicant was not eligible for the relief sought as he was a foreign national who entered Pakistan illegally in 2011, through the Iran (Taftan) border, and obtained forged and fabricated Pakistani credentials. It was submitted that the applicant had been illegally added into a family tree, per NADRA records, and upon investigation the relevant family had already disowned any nexus with the applicant. The official articulated that the material available on file demonstrates that the applicant is *prima facie* culpable and no grounds for further inquiry have been set forth.

- c. At the very onset the applicant's counsel was asked that if the Pakistani Passport and NIC were valid documents then why were they issued in an entirely different name / parentage. The counsel was also asked as to which identity of the applicant, Abu Bakar Siddiqui son of Ohidullah (being the name under which the present application has been filed) or Umar Farooq son of Abdul Ghaffar (being the name on the purported passport / NIC), was the correct one. Upon inability of the counsel to respond, the Court asked whether the counsel sought time to seek appropriate instructions. Learned counsel replied in the negative.
- d. The next question put to the applicant's counsel was in respect of the myriad of documentation recovered from the applicant's baggage showing him to be a foreign national, carrying a different name than that on his purported Pakistani passport / NIC. The counsel was asked whether the parallel divergent foreign credentials were inauthentic and foisted. Once again the counsel did not respond, hence, the Court queried whether time was required to seek appropriate instructions. Learned counsel answered in the negative.
- e. The applicant's counsel was then referred to the statement<sup>4</sup> of a prosecution witness, stipulating that the name of the applicant was fraudulently added to his family tree, and called upon to respond. Yet again the counsel expressed his inability to respond and furthermore opted not to avail an opportunity to consult the applicant for further instructions.

4. The alleged offence does not fall within the prohibitory clause, however, the law<sup>5</sup> states that even in such cases bail may be declined in the *prima facie* presence of recognized exceptional circumstances<sup>6</sup> and that an applicant may not claim bail as a right in a non-bailable offence even if the prohibitory clause is not attracted<sup>7</sup>.

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<sup>4</sup> Section 161 Cr.P.C. statement of Ghulam Rabbani.

<sup>5</sup> Per *Ajmal Mian J.* (as he then was) in *Imtiaz Ahmed vs. The State* reported as *PLD 1997 Supreme Court 545*.

<sup>6</sup> Per *Muhammad Munir Khan J.* (as he then was) in *Tariq Bashir & Others vs. The State* reported as *PLD 1995 Supreme Court 34*.

<sup>7</sup> Per *Iftikhar Muhammad Chaudhry J.* (as he then was) in *Haji Muhammad Nazeer & Others vs. The State* reported as *2008 SCMR 807*; *Muhammad Siddique vs. Imtiaz Begum & Others* reported as *2002 SCMR 442*.

5. A tentative<sup>8</sup> assessment of the material<sup>9</sup> placed before the court demonstrates the existence of some tangible evidence, which, if left unrebutted, may lead to the inference of guilt<sup>10</sup> and reasonable grounds have been shown linking the applicant with the cited offence/s<sup>11</sup>, and in such instances the law disapproves of the concession of bail.

6. It is also gleaned that the Prosecution has expressed cogent reasons indicating<sup>12</sup> the applicant's involvement in the alleged offence/s and the arguments articulated by the applicant's counsel did not qualify the present facts and circumstances to fall within the ambit of further inquiry<sup>13</sup>.

7. Notwithstanding having been unable to set forth any grounds for the consideration of bail, the applicant's counsel sought to rely on authority encapsulating general principles of law. The reliance of the applicant's counsel upon precedent, which was even otherwise distinguishable herein, is unmerited as it is settled law that the determination of each bail matter has to be predicated upon its own distinctive facts and the Court was required to ascertain whether, in the distinct circumstances, a fit case for bail was made out<sup>14</sup>.

8. In view hereof, it is the assessment of this Court that the learned counsel for the applicant has been unable to set forth a fit case for grant of post-arrest bail, hence, the present application is hereby dismissed. 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

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<sup>8</sup> *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

<sup>9</sup> *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

<sup>10</sup> *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

<sup>11</sup> *Muhammad Imran vs. The State* reported as 2016 SCMR 1401.

<sup>12</sup> *Rehman Ullah vs. The State* reported as 2020 SCMR 357; *Ravida vs. Amjad & Others* reported as 2018 SCMR 28; *Haji Shahid Hussain & Others vs. The State* reported as 2017 SCMR 616.

<sup>13</sup> As enumerated per Section 497(2) Code of Criminal Procedure 1898; *Muhammad Faiz vs. The State* reported as 2015 SCMR 655.

<sup>14</sup> *Muhammad Faiz alias Bhoora vs. The State* reported as 2015 SCMR 655.