

IN THE HIGH COURT OF SINDH, KARACHI**Cr. Bail Application No. 164 of 2020**

APPLICANT : Abdul Bari Khan s/o Syed Fazal Muhammad,
through Mr. Mallag Dashti, Advocate.

RESPONDENT: The State,
through Mr. Sagheer Ahmed Abbasi,
A.P.G.

Date of hearing : 10.03.2020.

Date of decision : 10.03.2020.

ORDER

ABDUL MOBEEN LAKHO, J.- Being aggrieved and dissatisfied by the impugned order dated 27.01.2020 passed by the Additional Sessions Judge-V Malir, Karachi in Cr.Bail Application No.152/2020 whereby the post-arrest bail of the present applicant was dismissed, the applicant/ accused has approached this Court seeking bail.

2. Briefly stated, the facts of the prosecution case as narrated in the FIR are that the complainant Imtiaz Ahmed, Manager in Eastern International Company lodged the FIR stating therein that his company received delivery order from different companies for which they hired transport companies for the delivery of orders to third party amongst those delivery orders was an order dated 07.11.2019 being DSO 736 which consisted on 228 batteries valued of Rupees One Crore and Thirty Five Lac which was to be delivered from company Agility Gowdown on plot No. SB-6, Port Qasim, Karachi to Sukkur at the address viz Geez Apas Plot No. 48/47 Muslim Cooperative Housing Society Military Road. The company of complainant hired a truck No. TKJ-298 from Super Al-Aziz Transport Company whose owner namely Muhammad Iqbal CNIC No.

5423086686419. The complainant at the time of loading on the said truck, the complainant was personally present and Agility Staff loaded the 288 batteries of which are the gate pass mentions the time of departure. The said truck left for Sukkur with driver Ahmed Shah CNIC No. 5420158782134 and cell No.033603171788 and owner Iqbal cell No. 03003395294 who after loading the truck sent truck to Sukkur but truck never reached Sukkur. The complainant tried to contact the driver but his cell phone was switched off, hence he contacted Iqbal, the owner of truck Adda and told him about the truck not reaching the destination, Muhammad Iqbal told the complainant we will search the truck as he is also in communication with the truck driver. The complainant has doubt that driver Ahmed Shah s/o. Akhtar Muhammad conspired with Muhammad Iqbal has embezzled the batteries. Now complainant came to report the matter. Hence this FIR.

3. Learned counsel for the applicant/accused contended that after dismissal of first bail application before trial court the applicant/ accused challenged the same impugned order before Sessions Judge Malir, Karachi vide bail application No.152/2020 and the same was dismissed by the Addl: Sessions Judge Vth Malir, Karachi by its vide order dated 27.01.2020; that the applicant/accused moved first post bail application bearing No.08/2020 before the learned trial court Judicial Magistrate VIIth Karachi Malir and the same was dismissed by vide order dated 08.01.2020; that the complainant has got registered the FIR mentioned above against two nominated accused and one of the accused was arrested in this case and the said accused never revealed the name of the present accused as the present applicant/accused has no nexus with the commission of alleged crime; that the prosecution case is totally false, frivolous, baseless and concocted to the extent of the present accused. There is no any iota of evidence against him; that the applicant is a peaceful and law abiding citizen who has not committed any crime, he was arrested from his home situated at Sohrab goth and no

any alleged battery recovered from his possession nor his pointation, the police has failed to associate any independent witness from the public which creates serious doubts in prosecution story; that the first charge sheet submitted in this crime on 06-12-2019 is totally silent regarding the name of present accused and there is no role assigned to the present accused in the said charge sheet; that the second charge sheet bearing No.185 submitted on 08.12.2019 and the name of the present applicant/accused is also missing and there is also no role assigned to the present accused by the complainant/police; that the after that the investigation officer has submitted the supplementary charge sheet on 18.01.2020 and the applicant/accused was shown in column No.3 as accused but there is also no specific role assigned regarding the section inserted in the FIR and there is no any independent reliable witness available against the present applicant/accused; that the police officials has miserably failed to associate any independent witnesses regarding the alleged recovery despite of the fact the recovery affected on the pointation of spy informer as alleged in supplementary charge sheet; that it is further submitted that in the impugned order it was written that the applicant was arrested on the pointation of complainant which creates serious doubts in the prosecution version; that one of the nominated accused namely Ahmed Shah who's name was revealed by the complainant with specific role but the investigation officer let off the said accused and delete his name from the charge sheet and inserted the name of present applicant as accused which need further probe into the matter; that prima-facie no any specific role is attributed to the Applicant, therefore, the offences mentioned in the FIR do not attract against/accused. The Applicant is totally innocent who has been falsely implicated in the instant case; that the applicant/accused has nothing to do with the alleged recovered battery, as per prosecution story nothing was recovered from the direct possession or direction of the applicant/accused; that the prosecution has no any evidence against the present applicant neither in shape of document nor any high witness who

support the version of the complainant hence the applicant prayed for bail; that there is no any substantial evidence available against the present Applicant. He is a first offender and there is no apprehension of his absconding which makes the case of the present accused of further inquiry.

4. Learned A.P.G. for the State has contended that the applicant/ accused is involved in a said offence, hence he is not entitled for the concession of bail.

5. We have heard the learned counsel for the applicant/ accused, learned A.P.G for the State and examined the material available on record.

6. The applicant has not been named in the FIR, no specific role has been assigned to him, no direct allegations has been levelled against the present accused, challan dated 05.12.2019 and 16.12.2019, the prosecution failed to find anything against the present accused. All of sudden on 17.01.2020 his name appears on a supplementary challan showing him to be standing close to the batteries and upon inquiry he disclosed that the batteries belong to his brothers who sent these from Quetta. The incriminating material recovered and its evidentiary value will be examined by the trial Court at the time of trial.

7. The sections applied in the FIR are 406 and 407:

406. Punishment for criminal breach of trust.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

407. Criminal breach of trust by carrier, etc.

Whoever, being entrusted with property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

plain reading of the above sections do not directly implicate the present accused and ingredients whereof will be decided at the trial after the evidence is evaluated.

8. Applicant has been in continuous custody since his arrest and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstances which could justify keeping the applicant behind the bars for an indefinite period. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of cases. Nothing on record that applicant is previously convicted in any case. Therefore, keeping in view the peculiar facts of instant case as well as minimum punishment, which normally may be considered while dealing with the bail plea, therefore, I am of the view that scale tilts in favour of the applicant for grant of bail.

9. Applicant has succeeded in bringing his case within the purview of subsection (2) of section 497 Cr.P.C., for this reason, In this regard, I am supported with the case of Shehmoro vs. The State reported in SBLR 2007 Sindh 249 applicant is admitted to post arrest bail subject to furnishing his solvent surety in the sum of Rs.1,00,000/- (Rupees Two Lac) and PR bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention here that any observation if made in this order is tentative in nature and shall not effect the merits of the case. It is made clear that in case if during proceedings the applicant/accused misuses the bail, then trial Court would be competent to cancel the bail of the applicant without making any reference to this court.

12. These are the reasons of my short order dated 10.03.2020.

This Criminal Bail Application stands disposed of in the same terms.

JUDGE