

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.137 of 2021

Applicants Muhammad Babar and Muhammad Shaban : Through M/s. Shaukat Ali and Shehroze and Ali Akbar Behan, Advocates

State : Through Ch. Waseem Akhtar, Assistant Attorney General for Pakistan

Criminal Bail Application No.230 of 2021

Applicant Muhammad Hanif @ Kaka : Through Mr. Liauqat Ali Awan, Advocate

State : Through Ch. Waseem Akhtar, Assistant Attorney General for Pakistan

Date(s) of hearing : 25.02.2021 & 08.03.2021

Date of Order : 08.03.2021

ORDER

Muhammad Saleem Jessar, J:- Through these applications, applicants (i) Muhammad Babar Lodhi, (ii) Muhammad Shaban and (iii) Muhammad Hanif @ Kaka, seek their admission on pre-arrest bail in Crime No.105/2017 of Police Station FIA AHTC Circle, Karachi, under Section 419/420/468/471/109 PPC read with Section 5(2) Act-II PCA 1947. The bail plea preferred by the applicants before first forum was declined by means of order(s) dated 25.01.2021, hence these bail applications.

Since, Mr. Shaukat Ali Sheroze, Advocate for the applicants in Criminal Bail Application No.137/2021, had argued the bail application on the last date of hearing; however, today, his Associate Mr. Ali Akbar Behan, is present and adopts arguments advanced on the earlier date.

The case of prosecution is that Mst. Zakira Shaheen Hamdani was residing at USA where she died on 29.04.1994. The details of actual Mst. Zakira Shaheen Hamdani are available at website <http://death-records.mooseroots.com/d/n/Zakira-Hamdani> and said website is of USA and contains death record of the individual. After her demise, one dummy of Mst. Zakira Shaheen Hamdani appeared before NADRA officials in the year 2008-09 and got issued a fake CNIC in her name upon the basis of her brother's CNIC, therefore, her daughter namely Simeen Gul Tabatabai moved an application to FIA police upon which basis instant FIR bearing No.105/2017 was lodged by Sub-Inspector Ameer Akbar Khan/FIA AHTC Karachi on behalf of the State.

It will be appropriate to reproduce the contents of FIR, which reads as under;_

" Brief facts of the case are that the enquiry No. 11/2016 was registered at this circle on upon receipt of a complaint from Simeen Gul Tabatabai, a dual US/Pakistan citizen, living in USA. The complaint is reproduced below:

"Fraudulent Issuance of NIC Card 42301-9001916-6 Re Zakria Shaheen Hamdani

I am Simeen Gul Tabatabai, a dual US/Pakistan citizen with US Passport 44153900 and Overseas Pakistani NICOP number 4230144634672. I am the wife of Syed Afzal Tabatabai US Pakistan Passport 441330791. My maiden name was Simeen Gul Hamdani (Old Pakistan ID card 51458092574). I am the daughter of Syed Sajjad Ahmed Hamdani (deceased February 21st 1985) (Pakistan ID card 514 26056182) and Zakira Shaheen Hamdani (deceased April 29th 1994) Pakistani ID card number 514 36056181) Copies of all the Pakistan ID cards are attached.

My mother passed away in Snta Barbara California after a long illness. A copy of her death certificate is attached. Because deaths in the United States are recorded by the Government one can confirm her death by the following web site <http://death-records.mooseroots.com/d/n/Zakira-Hamdani>

My mother is survived by three children:

- (1) Jamal Nasir Hamdani Pakistan Old ID 51456056183 new NICOP under processing Tracking 770000037050 and US Passport 505842750*
- (2) Simeen Gul Hamdani Pakistan Old ID 51458092574 and new NICOP 4239144634672*
- (3) Raja Sajjad Hamdani Pakistan Old ID 51460056185*

My mother left property in Karachi that her children inherited. Because we live in the USTA we were not familiar with the process required to formalize this process. We recently started the process for the succession certificate. We have learned that people have fraudulently attempted to sell our properties by use of a

fake NIC even though we have all the original documents in our possession and the properties are guarded by our security people. We have also been horrified to find out that NADRA has apparently issued a NIC card to someone purporting to be Zakira Shaheen Hamdani in July of 2009 (Fifteen years after my mother died). We were told that the NIC number is 42301-9001916-6. We were told that the date of birth on the card is 1/1/1936 and that the mothers name is Noor Bano and the fathers name is Khalil Mian. All that information is incorrect. A copy of the fake NIC is attached.

I am writing to request you to institute an appropriate administrative and criminal inquiry as to how this fraudulent document was generated, who were the witnesses for this fraudulent application and how people outside and possibly inside NADRA are soiling the good name of NADRA and Pakistan. I am also requesting an immediate cancellation of this fraudulent NIC.

My late mothers' brother and sister, my father's brother are alive and are in Pakistan and can further support our statements. I have powers of attorney from my brothers as well.

We seeks your prompt assistance so that we can safe guard our parent's property.

We have requested and authorized my mother's brother-in-law Air Vice Marshall (Retd) S.K.A Zaidi to submit this letter to you personally."

During enquiry, the NADRA vide letter No. NADRA/ASC/17/FIA/146 dated 26.01.2016, inter-alia, provided copy of Form No. OW00013912 regarding issuance of CNIC No. 42301-9001916-6 in the name of Zakira Shaheen Hamdani against MNIC No. 514-36-056181, attester's name as Muhammad Hanif CNIC No. 42401-5611980-3, and family tree showing the names of Simeen Gul Tabatabai (daughter) and Jamal Nasir Hamdani (son). The father's name of Zakira Shaheen Hamdani is Khalil Mian and mother's name is Noor Bano. Whereas the parentage of both the children is Sajjad Ahmed Hamdani. The data form also shows the endorsement of "Muhammad Amin 42401-8246678-9". The RG-I of MNIC No. 514-36-056181 shows father's name as Syed Sagheer Hassan, hence, the parentage viz. Khalil Mian mentioned in the Form No. OW00013912 is wrong.

Muhammad Hanif @ Kaka s/o Muhammaad Siddiq, the then Councillor appeared at this Police Station. He was shown the CNiC Form No. OW00013912 regarding issuance of CNIC No. 42301-9001916-6 in the name of Zakira Shaheen Hamdani, on which he admitted to have attested the said CNIC Form in the capacity as Councillor UC-I Bhutta Village, Keamari Town, Karachi.

Besides, NADRA vide letter No. NADRA/ASC/17/FIA/245 dated 15.02.2016 provided the RG-I and family tree of Muhammad Amin. The father's name is Khalil Mian and mother's name is Noor Bano i.e. same as of dummy Zakira Shaheen Hamdani. The RG-I is attested by Dr. Muhammad Attaur Rehman. The RG-I shows that he held old MNIC No. 503-95-634158 whereas vide letter No. NADRA/ASC/17/FIA/646 dated 08.04.2016, NADRA, inter-alia, initiated that old MNIC No. 503-95-634158 (Muhammad Amin) has not been issued to any citizen. It is thus evident that the CNIC was fraudulently issued to Muhammad Amin on the basis of old MNIC number which does not exist in any name. Not only Muhammad Amin got issued his CNIC fraudulently but by mentioning / producing his CNiC, he also got issued the CNIC to impostor Zakira Shaheen Hamdani.

It has been established from the enquiry conducted and evidences collected so far that the CNiC No. 42301-90019196-6 to impostor Zakira Shaheen Hamdani w/o Syed Sajjad Ahmed Hamdani was fraudulently issued with the help of Muhammad Amin who produced his CNIC for issuance of said CNIC, the CNIC No. 42401-8246678-9 in the name of Muhammad Amin s/o Khalil Mia was also fraudulently issued on the basis of old MNIC No. 503-95-634158 whereas this MNIC has not been issued to any citizen as intimated by NADRA. Besides, Muhammad Hanif @ Kaka s/o Muhammad Siddiq, Councillor UC-I

Bhutta Village, Keamari Town, Karachi admitted to have attested the CNIC Form of impostor Zakira Shahin Hamdani. The role of concerned officers / officials of NADRA pertaining to the issuance of the said CNICs shall be determined during the course of investigation.

The above facts constitute the commission of offences punishable u/s 419/420/468/471/109 PPC. Hence, the registration of the case against impostor Zakira Shaheen Hamdani w/o Syed Sajjad Ahmed Hamdani, Muhammad Amin s/o Khalil Mian, and Muhammad Hanif @ Kaka s/o Muhammad Siddiq, the then Councillor UC-I Bhutta Village, Keamari Town, Karachi, and others. The investigation of the case taken up by the undersigned."

After registration of the case, investigation was assigned to Sub-Inspector Ameer Akbar Khan, who after completion of legal-cum-usual formalities, has submitted charge sheet on 31.12.2019, which is now pending for trial before the Court of Special Judge (Central-I) Karachi vide Case No.11/2019 (re-the State Versus Babar Lodhi and others). In the charge sheet, besides applicants, in all three accused were charge sheeted and the name of third person is Rifat Iqbal (Approval User/Incharge). Later, eight more accused namely Ayaz Fayaz, Ghousia Ansari, Bushra Ansari, Atif Qamar, Amna Khatoon, Muhammad Siraj, Iqbal Ansari, Muhammad Ali and Muhammad Hanif @ Kaka were arrayed as accused, out of them, three namely Ayaz Fayaz, Muhammad Siraj and Iqbal Ansari, all from NADRA, who have been granted pre-arrest bail by the trial Court in terms of its order dated 25.01.2021. Accused Rifat Iqbal has also been extended grace of pre-arrest bail by the trial Court in terms of its order dated 25.01.2021.

Learned counsel for the applicants in Criminal Bail application No.137 submitted that applicants are neither beneficiary of the offence nor have had any nexus with the property left by the deceased, the actual owner Mst. Zakira Shaheen Hamdani. He next submitted that co-accused Rifat Iqbal, Muhammad Siraj and Ayaz Fayaz have been granted pre-arrest bail by the trial Court in terms of orders captioned above; however, in support of his contention, he submits true copies of said orders, which are hereby taken on record. He further submitted that one Mst. Madiha Akhtar had filed Civil Suit No.922/2016 (re-Madiha Akhtar Versus Zakira Shaheen Hamdani and others) before this Court and upon arrival/appearance of the original owners of the property/legal heirs of the deceased Mst. Zakira Shaheen Hamdani, said suit was withdrawn by the plaintiff, which stood dismissed as not pressed. He further submitted that Mst. Zakira Shaheen Hamdani, who allegedly got issued a fake CNIC from NADRA by

presenting fake documents as well as fake dummy to be her brother, have not been arrayed by the I.O as accused in this case; however, further submitted that said fake/dummy/imposter Mst. Zakira Shaheen Hamdani is said to have allegedly been abducted from the jurisdiction of P.S Defence-A Lahore on 23.08.2009 and to such effect FIR No.673/2009 was got registered by her niece namely Maqsood Ahmed. Right from 2009 to date her clue is not known whether she was released by the abductors or still is with them and whether she is alive or otherwise. He further pointed out that Syed Waseem Jaffari and Ahmed Khan had also filed Civil Suits No.327/2009 before the Court of 6th Civil Judge/Judicial Magistrate, Karachi (South) (re-Syed Waseem Jaffari and another Versus Mst. Zakira Shaheen Hamdani and another), which subsequently was disposed of. He next submitted that one Qamar Abbas also filed JMA No. Nil/2016 before this Court (re-Qamar Abbas Versus Mst. Zakira Shaheen Hamdani), which is also pending adjudication; however, said persons though were plaintiffs in different suits and accused party to the proceedings, have not been arrayed as an accused nor I.O extended scope of his investigation to that extent. Further submitted that allegation against applicants is that they being NADRA officials had issued fake CNIC for which they are not responsible as whatever documents were produced before them they by following SOPs of NADRA had processed and then it was issued systematically. Next submitted that instant FIR was lodged in the month of March, 2017, whereas, applicants were not nominated in the FIR as accused and after about lapse of two and half year they have been made accused by the I.O under the charge sheet. Lastly, submitted that applicants are not beneficiaries nor such evidence has been brought on record to show nexus with commission of the alleged offence; hence, their implication in this case seems to be evasive, therefore, their case requires further inquiry and prays for confirmation of their bail on the ground of two folds, one on merits and other on rule of consistency.

Learned counsel for the applicant in Criminal Bail Application No.230/2021 submits that allegation against applicant Muhammad Hanif @ Kaka is that he allegedly attested the Form issued by the NADRA for issuance of fake CNIC and said Form was not produced by the FIA police before the Judicial Magistrate at the time of submission of interim challan. In support of his contention, he focused upon bail order dated 06.05.2017

(available at page-57 of the Court file and relevant is para-B at page-59 of Criminal Bail Application No.230/2021) which reads as under;_

*“B- Secondly, it appears from perusal of record that the accused person is not nominated in the FIR and his role on the basis of which he has been booked in the instant case is that he allegedly attested the form for issuance of fake CNIC. Whereas, the original form on which his alleged attestation is available has been seen neither on police File nor on judicial file. Further that, such attestation has also to be verified by the forensic laboratory and in the absence of such verification/opinion of expert the case of applicant/accused warrants further inquiry. It further appears that no action has, against the concerned NADRA officials who issued the alleged fake/forged CNIC, been taken. This point alone independent of other circumstances, make the case one of further inquiry. In this regard reliance is placed on 2010 MLD 1251. On this point, it is concordantly held by Superior Courts that, the accused is entitled to the concession of bail when his case calls for further inquiry. Reliance is placed on **P.L.D 1989 Supreme Court 585**. Furthermore, even in the cases falling within the prohibitory clause of Section-497(1) of Cr.P.C, where the case warrants further inquiry, then bail could not be withheld as a matter of policy. Reliance is placed on **2016 MLD 392**.”*

Learned counsel further submits that applicant is not nominated in the FIR; hence, his implication in this case requires further probe. Next submits that initially the challan of the case was filed by FIA police before Civil Judge/Judicial Magistrate-XXI, Karachi (West) where he was granted post arrest bail on 06.05.2017 (available at page-57 of the Court file). Learned counsel further points out that after grant of bail to the applicant by the Judicial Magistrate, FIA police moved an application for withdrawal of case papers from said Court to submit final challan/charge sheet before the Court of Special Judge, Anti-Corruption (Central-I) Karachi and the application filed by FIA police was allowed by the Judicial Magistrate on 23.10.2017 (vide page-65 of the Court file). He further submits that later FIA police inserted Section 5(2) of the Act, 1947, therefore, case was made to be tried by the Special Judge, Anti-Corruption, hence, bail granted to him by the Magistrate had become infructuous. He, therefore, filed fresh pre-arrest bail application before the trial Court where the request so made on his behalf was declined; hence, this bail application has been maintained. Finally submits that once the applicant was granted post arrest bail and later due to insertion of different sections of law, forum for trial was changed, therefore, he may not be put behind the Bars merely because of change of forum as the offence does not fall under prohibitory clause of section 497(1) Cr.P.C. Hence, the applicant deserves to be admitted to bail in view of the aforementioned circumstances.

On the other hand, learned Assistant Attorney General for Pakistan, opposes the bail application bearing No.137/2021 on the ground that sufficient material was collected by the I.O against applicants, they being NADRA officials have rightly been arrayed as accused in this case. He; however, could not controvert the factum of delay in lodgment of FIR; besides co-accused on same set of evidence have already been admitted to pre-arrest bail by the trial Court. He is also not in position to respond query with regard to non-implication of the persons who have filed different suits before different forums regarding same property in dispute being beneficiary of the offence.

Learned Assistant Attorney General for Pakistan also opposes the bail application bearing No.230/2021 on the ground that Form allegedly attested by the applicant is available with him in the police file; however, its original is lying with NADRA. On query by the Court, he has no answer how and why said Form was not filed by the FIA police at the time of submission of interim challan before the Magistrate concerned. He further submits that signature of applicant has not been got verified from the expert.

Heard arguments and perused record. Admittedly, the incident as shown in the FIR had allegedly occurred in the year 2009; whereas, report thereof, was lodged on 29.03.2017 for which no plausible explanation has been furnished. No doubt the applicant/complainant moved an application for making complaint regarding fake issuance of CNIC of her mother who were residing out of the land, yet they being owners of same property in the country were required to intimate concerned authorities regarding death of their mother. Even in her application, the applicant/complainant had not arrayed/nominated any of the accused, albeit, subsequently they have been made as accused by the I.O; however, the investigation conducted by him/I.O in view of above factual controversy seems to be not logical. I.O has failed to bring nexus of the applicants with commission of the offence being beneficiary or involved in this case; however, persons who are claiming to be owners of the property in dispute by virtue of certain fake agreements on part of late Mst. Zakira Shaheen Hamdani, by filing their Civil Suits, had not been arrayed as an accused even they were not examined by the I.O under section 161 Cr.P.C. The conduct on the part of prosecution to the extent of implication of the

applicants seems to be controversial and cannot be taken into consideration particularly at bail stage. Entire evidence of the prosecution is in shape of the documents, which rests with the prosecution, therefore, question of its tampering or absconding of the accused who being public servants, does not arise. The co-accused having same role have also been admitted to pre-arrest bail by the trial Court, which has not been challenged by the prosecution. Accordingly, propriety of law demands that present applicants should also be extended constant treatment.

The upshot of above discussion is that applicants have made out a good prima facie case for their admission on pre-arrest bail in terms of section 497(2) Cr.P.C. Consequently, bail applications in hand are hereby allowed; interim bail granted earlier to applicants **(i) Muhammad Babar Lodhi son of Muhammad Azam Lodhi, (ii) Muhammad Shaban son of Muhammad Muhammad Buksh and (iii) Muhammad Hanif @ Kaka son of Muhammad Siddiq**, on 26.01.2021 and 08.02.2021 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

Office to place copy of this order in connected bail application.

JUDGE