

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No. S- 698 of 2021

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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Applicant: Muhammad Ali Soomro
through Mr. Saifullah Dasti, Advocate

Ms. Safa Hisbani, Assistant P.G Sindh along with
Muhammad Kashif Gujjar, I.O.

Date of hearing & decision: 08.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J :- The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned Special Judge, Anti-corruption (P) Hyderabad vide order dated 19.05.2021.

2. The contents of FIR registered against the applicant are as under:-

“ This case is being registered with the approval of Competent Authority/Chairman ACC-II Hyderabad given in the meeting held on 17-02-2021 as a result of Surprise Visit conducted at the Office of Medical Superintendent, Social Security Hospital, Hyderabad received through Deputy Director, ACE Hyderabad vide No.ACH/2021/R/936 dated 14.04.2021 initiated on the report of Medical Superintendent, Social Security Hospital Hyderabad vide No.SSIH/HOSPT/2019-20/483 dated 30.08.2019 on the following allegations:

That an employee of our institution Mr. Muhammad Ali Soomro, Cashier SS Hyderabad Hospital has been “DISMISSAL FROM SERVICE” by competent Authority Commissioner SESSI, vide head office No.SS-Admn/2019-473 dated: 22-08-2019 due to embezzlement Income Tax amount Rs.72,76,221/- (Seventy-two lacs Seventy-Six Thousand two hundred twenty-one rupees only) which had been deducted from the salaries of employees of SESSI.

The copies of relevant documents were also obtained from the concerned corner. After obtaining the record statements and other evidence it has been established that accused

Muhammad Ali Soomro during the year 2017-18 & 2018-19 posted as Cashier at SS Hospital Hyderabad and embezzled Rs.30,51,225/-. During the examination of relevant records for the year 2015-16 & 2016-17 it is also found that there was further Rs.42,24,996/- were deposited other than the Income Tax Officer account. That the total Rs.72,76,221/- (Seventy-two lacs Seventy Six Thousand two hundred twenty-one rupees only) embezzled by Muhammad Ali Soomro Ex-Cashier and others by misusing official powers and committed a cognizable offence punishable U/S 409,420,477-A,34 PPC. R/W Section 5 (2) Act-II of 1947. Therefore, the case is registered on behalf of the state.”

3. Mr. Saifullah Dasti learned counsel for applicant contends that the FIR is inordinately delayed about three years without any plausible explanation; that the applicant is innocent; that allegations against the applicant are false and based on ill-founded facts owing to some grudge and vendetta; that neither the applicant put his signature on alleged cheques nor has any authority but such powers lies with Medical Superintendent, Accounts Officer and Audit Officer who are responsible for alleged misappropriation as cheque could not be encashed without their signatures; that it is quite impossible to make forged transactions without help of Bank officials/officers which are malafidely imposed upon the applicant; that the applicant faced prejudice attitude of his high ups who was forcibly dismissed from service to make him escape good and to save skin of high officials who were involved in embezzlement of funds; that the applicant has filed Grievance Application U/S 34(6) of SIRA, 2013 which is still pending before learned Sindh Labour Court No.VI, Hyderabad; that applicant being a low-grade official is the victim of the aristocracy of high ups; that applicant is a respectable person and if he is not allowed pre-arrest bail, then he will be humiliated at the hand of police.

4. On the other hand, learned APG for the State has vehemently opposed this bail application on the ground that the applicant has misappropriated an amount of Rs.72,76,221/- while posted as Cashier at Social Security Hospital, Hyderabad, therefore, he is not entitled to concession of pre-arrest bail in any manner as FIR was registered against him based on the report of Medical Superintendent, Social Security Hospital, Hyderabad.

5. I have heard the learned counsel for the parties and have gone through the record of the case.

6. I have noticed that the applicant is nominated in the aforesaid crime with the accusation that he embezzled Income Tax amount Rs.72,76,221/- (Seventy-two lacs Seventy Six Thousand two hundred twenty-one rupees only) which had been deducted from the salaries of employees of SESSI.

7. The learned trial Court while declining the request of the applicant for pre-arrest bail, premised its findings in the following manner:-

“Heard arguments and perused the relevant record. From the perusal of record, it transpires that the present applicant namely Muhammad Ali Soomro was posted as Cashier in Social Security Hospital, Hyderabad. He being a Cashier used to prepare and encash cheques from time to time in order to deposit Income Tax Amount being deducted from the salaries of officers/officials of Social Security Hospital, Hyderabad. However, such amount was deposited by him in his personal Bank Account by making tampering in Cheques. On the basis of probe and enquiry as well as Bank record of Muslim Commercial Bank, Gari Khata Branch, Hyderabad, he was found involved in embezzlement of Rs.72,76,221/-. In this regard, list of tampered cheques with date and amount is also available in record. He had not only admitted his guilt before the Competent Authority namely Commissioner, Sindh Employees Social Security Institution, Karachi on 20-08-2019. But he had also admitted through his written statement that he had deposited Income Tax Amount deducted from officials/officials of Social Security Hospital, Hyderabad in his personal account fraudulently by signing (F-II) and manipulating other documents since 2015. On his own admission, he was dismissed from Government Service vide order No.SS-Admn/2019-473 dated;- 22-08-2019 for committing a misconduct in terms of sub-clause (iv) of clause (b) of sub-section 1 of section 4 of E&D Rules, 1973. Prima facie, sufficient material is available on record which connects him with the commission of an offence in question. No doubt, FIR in the present case had been registered with a delay, yet, plausible explanation has been reflected from the Departmental Enquiry Report and other incidental proceedings. Therefore, mere on the ground of delay in registration of FIR, the applicant cannot claim a concession of pre-arrest bail in non-bailable / cognizable offence as a matter of right.”

8. The law on the subject is very clear in its terms that at the bail stage this court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question is whether or not there exist reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum.

The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un-rebutted, may lead to the inference of the guilt of the accused.

9. It is by now well-settled that the accused in a criminal case cannot be allowed to subvert or undermine investigative procedure/process. The Honourable Supreme Court in the case of Criminal Petition No.197-K to 204-K, 211-K to 221-K and 230-K of 2019 vide order dated 05.12.2019 has held that grant of pre-arrest bail is a remedy rooted into equity; at a cost to hamper the investigation, this judicial protection is extended, solely to save the innocent from the horrors of abuse of process of law to protect his dignity and honor. It cannot be granted in every run-of-the-mill criminal case, particularly to the accused confronting prima facie charges structured upon material/evidence, warranting custody, that too, based on positions/ pleas, verification whereof, is consequent upon the recording of evidence.

10. The investigation officer present in court has submitted that investigation, in this case, is in progress and the custody of the applicant is required for further investigation concerning his role and his accomplices; and, there is question and probability that the evidence could be tampered with by the applicant or that the prosecution witnesses will be influenced by him if his pre-arrest bail is confirmed. Moreover, the material evidence relating to the subject matter is yet to be collected from the applicant during the investigation. Be that as it may, I am cognizant of the fact the guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court thus the investigation cannot be thwarted and allow the applicant with the premium to circumvent the legal process by not joining the investigation.

11. In view of the above, a grant of pre-arrest bail in such a situation will undermine the entire investigation process which is not permissible under the law, authoritatively and consistently enunciated by the Hon'ble Supreme Court in the aforesaid cases, is

attracted in the instant case. Thus, the applicant is not entitled to the concession of pre-arrest bail. This bail application is dismissed accordingly consequently, his interim bail granted vide order dated 11.8.2021 is recalled.

12. It is clarified that the observations made hereinabove are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

JUDGE

Sajjad Ali Jessar