

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.489 of 2021

<i>Date</i>	<i>Order with signature of Judge</i>
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1. For orders on office objection.
2. For hearing of Bail Application.

18.01.2022

Mr. Umar Farooq Khan, Advocate along with Applicant (on bail).
Mr. Ch. Waseem Akhtar, Assistant Attorney General for Pakistan.
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Aijaz Ahmed Hashmi seeks his admission on pre-arrest bail in Crime No.60/2021 of Police Station Mithadar, Karachi, under Section 420/468/471 PPC. The case, after thorough investigation, has been challaned by the police which was pending for trial before the Court of Judicial Magistrate where after recording evidence of the prosecution witnesses, case was sent up to the Court of Sessions, wherefrom it has been assigned to 9th Addl. Sessions Judge, Karachi (South) vide Sessions Case No.Nil (re-The State Versus Aijaz Ahmed Hashmi). The bail plea raised by the applicant before Court of Sessions, which subsequently was assigned to 12th Addl. Sessions Judge, Karachi (South), who after hearing the parties, has dismissed his bail application through order dated 17.03.2021; hence, instant bail application has been filed.

2. Succinct facts of the case are that the letter No.SSP/CITY District/Legal/238 dated 16.02.2021 received wherein found that applicant / accused sent application to DIGP Establishment CPO Sindh Karachi regarding correction in his date of birth and submitted that his date of birth was 16.09.1963 and according to seniority list his date may kindly be inserted. Thereafter, he came to this Court whereby Senior Officer made inquiry and come to know that applicant / accused with regard to his date of birth found tampered on different times; hence, instant FIR was lodged.

3. Learned counsel for the applicant submits the allegation against applicant is he allegedly changed his date of birth aims to enhance service tenure; however, he had never been posted as SDPO Risala and the allegation to that extent is not

tenable. Next submits that the offences applied under FIR either are bailable or are non-cognizable except section 468 PPC which carries maximum punishment up to seven years. Further submits that applicant has been retired from the service and being senior citizen, his case is purely covered by 4th proviso of section 497 Cr.P.C and is entitled for bail. He also admits that entire prosecution witnesses have been examined and the trial is almost at the verge of conclusion; hence, bail granted to him earlier may be confirmed. In support of his contention, he places reliance upon an unreported ruling passed by the Hon'ble Supreme Court of Pakistan in Criminal Petition No.102-K of 2021 vide order dated 22.10.2021 and submits that case of the applicant is identical one to that of accused who have been extended extraordinary relief by the Hon'ble Supreme Court of Pakistan.

4. On the other hand, learned Assistant Attorney General as well as Deputy P.G, Sindh appearing for the State, oppose the bail application on the ground that applicant being senior police officer had misused his official capacity by putting influence upon the local administration and then got his date of birth changed; however, both the learned counsel appearing for the State, do not controvert the fact that offence with which applicant stands charged, are bailable except section 468 PPC which carries maximum punishment up to seven years and does not exceed limits of prohibitory clause of section 497 Cr.P.C.

5. **Heard arguments and perused record.** Per available record, the incident, as shown, had occurred in the year 2018 and report thereof was lodged on 18.02.2021 with delay of about three years and no plausible explanation was furnished by the prosecution for such an inordinate delay. The allegations leveled against him that he allegedly maneuvered and changed date of birth to enhance service tenure; however, entire said evidence is in shape of documents which are in custody of the prosecution itself. If the contention of the FIR presumed to be true, the record which allegedly was tampered with, was in custody of different officers involved in tampering from different government departments and all those were not examined by the I.O during investigation nor they were made as an accused in this case. The allegation as leveled by the prosecution, had started from the person(s), who beside the applicant, were involved in tampering and without their examination, chain of offence cannot be said to be connected and thus accusation against applicant, in view of above factual position, requires further probe. Moreover, the offence with which applicant stands charged, carries maximum punishment up to seven years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C and in such like cases bail become right of the accused and refusal will be an exception.

6. I am fortified with the dictum laid down by Hon'ble Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*; besides, the applicant stands retired and he being senior citizen deserves lenient view. Accordingly and in view of above, case against applicant is purely covered by sub-section 2 to section 497 Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Aijaz Ahmed Hashmi son of Muhammad Sayeed Hashmi** on 24.03.2021 is hereby confirmed on same terms and conditions.

7. 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.

8. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his 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.

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

JUDGE

Zulfiqar/P.A