

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Criminal Bail Application No.S-939 of 2021

Applicant : Jeso Son of Ghan Shaam Das, through Mr. Riazat Ali Sahar,  
Advocate.

Respondent : The State through Mr. Muhammad Humayoon Khan, Deputy  
Attorney General for Pakistan.

Complainant : SI Muhammad Yousuf FIA Mirpurkhas I.O of the case.

Date of hearing : **15.11.2021**  
Date of Order : **15.11.2021**

**O R D E R**

**AMJAD ALI SAHITO, J:-** Through the instant bail application, the applicant/accused above named seeks his post-arrest bail in Crime No.01 of 2021, under sections 5, 23, Exchange Regulation Act-1947 (Amendment Act-2020) [hereinafter to be referred as Act] R/w section 109 P.P.C & sections 3 & 4 of Anti-Money Laundering Act 2010, after his bail plea was declined by the learned Sessions Judge Umerkot vide order dated 24.09.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicant/accused has not committed any offence but in fact three F.I.Rs were registered at P.S. Umerkot and they have written letter to the Director FIA Sindh Zone-II Karachi for parallel investigation of money laundering act; that in view of Section 5 of the Act only the complaint would be made within the meaning of section 21 of the Pakistan Penal Code but in the instant case the F.I.R was registered. He further contended that F.I.R is registered under sections 5, 23 of the Act which provides maximum punishment upto five years, hence does not fall within prohibitory clause; that applicant is in jail, he is no more required for further investigation; that section 5 of the act deals with the payment/transaction in any shape with the person residing outside of the Pakistan, however prosecution has been miserably failed to bring any single piece of evidence on the record which could show any alleged transaction on the part of applicant/accused with any person outside Pakistan; that in the final charge sheet bearing No.09 dated 27.07.2021 FIR has leveled allegations that applicant/accused has made transactions with 51 persons but it is very

surprising that neither the said persons were made accused nor the witnesses in this case; that neither the vehicles which were seized in FIR's registered at PS Taluka Umerkot are registered in the name of applicant/accused nor he has any concern with the said vehicles; that no documentary evidence with regard to Hundi Hawala under instrument of negotiable Act was brought at the time of submission of interim challan in the instant crime; that the applicant has been admitted to bail in the FIR bearing Crime Nos.53 of 2020 PS Taluka Umerkot, 54 of 2020 PS Taluka Umerkot and 190 of 2020 P.S. City Umerkot, on the basis of which the applicant has been booked in the instant crime. He lastly prayed for grant of bail. In support of his contentions, he relied upon the cases of *Dr. ABDR RAUF Vs. The STATE through D.A.G [2020 SCMR 1258]*, *NAZIR AHMED SHAIKH and others Vs. NATIONAL ACCOUNTABILITY BUREAU, ISLAMABAD and others [2020 SCMR 297]* *MUHAMMAD ALI Vs. STATE BANK OF PAKISTAN, KARACHI AND ANOTHER [1973 SCMR 140]*, *MUHAMMAD ALAM Vs. The STATE [2018 P Cr. L J 837]* *SHAMS-UR-REHMAN Vs. The STATE and others [2014 MLD 431]* and *MUHAMMAD YOUNAS Vs. The STATE [2016 P Cr. L J 593]*.

4. On the other hand, learned Deputy Attorney General for Pakistan duly assisted by Investigating Officer vehemently opposed for grant of bail however submits that applicant is involved as many as 11 cases, as such, he does not entitle for concession of bail; however, I.O of the case admits that he has not lodged a complaint before Tribunal to register a case. He lastly prayed for dismissal of instant Criminal Bail Application.

5. I have heard the learned counsel for the applicant and learned Deputy Attorney General for Pakistan having also gone through the material available on record.

6. Admittedly the applicant has not committed any new offence but on the basis of previous FIRs new investigation has been started, as per I.O the applicant is involved in Money Laundering. Further perusal of record it reflects that three F.I.Rs being Crime Nos.53, 54 and 109 of 2020 were lodged against the applicant and his case was referred to Director FIA Sindh Zone-II Karachi for parallel investigation of Money Laundering under Anti-Money Laundering Act 2010 the investigation was conducted and he was arrested. The I.O present in Court states that some of the transactions have been made through Quetta and Chaman Branch. On inquiry whether any transaction has made

outside Pakistan or not which fall within the Money Laundering Act but I.O was unable to answer properly. The section 5 of Act *ibid* reads as under:

“(1).....

- (a) *make any payment to or for the credit of any person by order or on behalf of any person resident outside Pakistan;*
- (b) *draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Pakistan;*
- (c) *make any payment to or for the credit of any person by order or on behalf of any person resident outside Pakistan;*
- (d) *place any sum to the credit of any person resident outside Pakistan;*
- (e) *make any payment to or for the credit of any person as consideration for or in association with –*
  - (i) *the receipt by any person of a payment or the acquisition by any person of property outside Pakistan;*
  - (ii) *the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside Pakistan;*

From the above act it is clear that if any payment is made outside the country then the offence falls within the act and in the instant case only transaction has been made inside the country. Further under sub-section 3 provides to make a complaint in writing, if he is not already a public servant within the meaning of section 21 of the Pakistan Penal Code also deemed to be a public servant within meaning of that section whereas section 3 (b) a tribunal taking cognizance under sub-section (i) shall complete the proceedings within six months. Section 23 provides that every Sessions Judge shall, for the areas within the territorial jurisdiction of his jurisdiction, be a Tribunal for trial of an offence punishable under section 23, in the instant case the I.O has registered a F.I.R against the applicant/accused being Crime No.01 of 2021 P.S. FIA Crime Circle Mirpurkhas.

7. Admittedly, the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. Investigation Officer of the case has furnished final charge sheet No.9 dated 27.07.2021 before the learned Trial Court. As far as involvement of the applicant in the FIR bearing Crime Nos.53 of 2020 PS Taluka Umerkot, 54 of 2020 PS Taluka Umerkot and 190 of 2020 P.S. City Umerkot, on the basis of which the applicant has been booked in the instant crime is concerned, he has been admitted on bail in such F.I.Rs. It is also observed that each case is to be decided on its own merits. In the case of Dr. ABDUR RAUF *supra* the Hon’ble Supreme Court has granted bail to accused on the ground that offence alleged against accused fall outside the prohibitory clause of section 497 Cr.P.C accused was behind bar for more than three months and nothing was

recovered from him in such like cases grant of bail was a rule and refusal was an exception. In another unreported case of Hon'ble Supreme Court of Pakistan ***Jahzeb Khan Vs. The State through A.G KPK*** and others, the Hon'ble Supreme Court of Pakistan has held that:

*“4.....Petitioner’s continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars s a strategy for punishment. A case for petitioner’s release on bail stands made out”*

8. Learned Deputy Attorney General for Pakistan has also not pointed out any exception to refuse bail to the applicant/accused.

9. In view of above facts and circumstances, learned counsel for the applicant/accused has succeeded to make out case for grant of bail in terms of section 497(2) Cr.P.C, therefore, the instant bail application is allowed and applicant/accused Jeso is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of learned Trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicant on merits.

*Muhammad Danish\**

JUDGE