

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

Criminal Bail Application No. S - 406 of 2021

Mr. Ishrat Ali Lohar, advocate for the applicant.

Mr. Muhammad Humayoon Khan, D.A.G along with Imran  
Fakhar, IO/SHO F.I.A.

Date of hearing: **3-9-2021**

Date of decision: **3-9-2021**

**ORDER**

**Khadim Hussain Tunio, J.**—Through captioned criminal bail application, the applicant Abdul Haleem seeks his admission to post-arrest bail in Crime No. 02/2021, registered at Police Station Federal Investigation Agency (*FIA*), Composite Circle, Shaheed Benazir Abad for the offences punishable u/s 23 of Foreign Exchange Regulation (Amendment) Act, 2020 r/w Ss. 3 & 4 Anti-Money Laundering (AMLA) Act, 2010, amended 2020 r/w Ss. 34 and 109 PPC. Previously, applicant sought the same relief before the learned Sessions Judge, Shaheed Benazir Abad but the same was denied.

2. Precisely, facts of the prosecution case, as unfolded in the FIR bearing Crime No.02/2021, lodged with FIA, CC, Shaheed Benazir Abad on 19-02-2020, are that the complainant received information regarding the present applicant, being the owner of Shop M/S Memon Communication situated at Alvi Center, near National Bank Daur, District Shaheed Benazir Abad was engaged in illegal business of Hawala/Hundi and cash remittance without using a legal channel of bank in violation of Foreign Exchange Regulation Act (FERA) (Amendment) Act, 2020 and caused loss to the Government exchequer. An enquiry, bearing No. 12 of 2021 was registered after approval and thereafter a team was prepared for a

raid on the provided location where the business was located. During the raid, the applicant was arrested and several documents along with various currencies in different denominations and cheque books were recovered.

3. Mr. Ishrat Ali Lohar, learned counsel for the applicant has argued that the applicant is a respectable citizen and does not have a past criminal record; that the alleged recovery has been foisted upon the applicant; that the applicant is innocent; that the story, as narrated in the FIR, is false and fabricated; that regarding the alleged recovered amount, it was yet to be determined whether the same was gained through illegal means; that no dummy purchaser was sent to the applicant to ascertain the claims alleged by the FIA; that offence does not fall within the prohibitory clause of section 497 Cr.P.C; that the applicant is behind bars since his arrest. Lastly, he prayed for grant of post-arrest bail to the applicant. In support of his contentions, he cited the case law reported as "*Zaheerullah v. The State*" (2015 P.Cr.L.J 1048), "*Habeebullah v. The State*" (2015 YLR 894), "*Anwar Khan v. The State*" (2018 YLR 172) and "*Rafiullah v. The State*" (2019 P.Cr.L.J 1608).

4. On the other hand, Mr. Muhammad Humayoon Khan, learned D.A.G contended that the instant FIR has been lodged after due inquiry and no enmity whatsoever has been alleged by the applicant against the investigating authority; that sufficient material for connecting the applicant with the commission of offence is available on the record; and that applicant / accused has committed heinous offence. He, therefore, prayed for dismissal of the instant Criminal Bail Application.

5. Heard the learned counsel for the applicant and learned D.A.G so also perused the material available on record with their assistance.

6. It is a matter of record that the FIA authorities received exclusive information regarding the present applicant running a business of *hawala/hundi* through his shop under the name and style of Memon Communication. Having this information and considering it to be true, a raiding party was prepared which was headed by the complainant. Upon reaching at the pointed out place, the FIA authorities identified themselves and entered the said place, inquired the name of the applicant which was provided to them and searched the premises and recovered various documents relating to the alleged *hawala/hundi* business, a laptop, some receipts of the proceeds from the business, several cheque books and foreign currency to the extent of 800 Dirhams and Rs.21,100/- in local currency. What this Court fails to understand is why, even despite prior knowledge which moved the law in action, the authorities failed to abide by *mandatory* provisions of S. 103 of the Criminal Procedures Code. S. 19 (3B) of the Foreign Exchange Regulations Act (*hereunder referred to as "The Act, 1947"*) provides that a police officer who is authorized under sub-section (3) of the Act, 1947 shall conduct any search under that sub-section or under sub-section (3A) *in accordance* with the provision relating to search in the Code of Criminal Procedure, 1898. The provisions relating to search are provided by S. 103 Cr.P.C which states that before making a search under the given proviso, the person about to make the search shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situated, to attend and witness the search. Record reveals that the complainant/FIA had prior information from a "credible" source that an offence was being committed by the applicant. This is where they were provided the first chance, that being so when they were preparing for the raid. The second opportunity to call independent mashirs was when they reached the populated area where the raid was being conducted. Therefore, such a clear violation of provisions of Section 103 Cr.PC

and Section 19 of the Act, 1947 is showing *malafide* on the part of complainant/FIA authorities.

7. Under the principle of law and justice, each bail petitions is to be decided on its own and the law applicable thereto. The record shows that the applicant/accused is neither a previous convict nor a hardened criminal and has been in continuous custody since his arrest. Besides, in the present case, it appears that the entire case is based upon documentary evidence, which too is already with the Prosecution as such in the event the applicant/accused is released on bail no chance of tampering with evidence will arise. The contention of the counsel for applicant that it is yet to be proven whether the currency alleged to have been recovered from the applicant was proceeds of illegal gain or not holds substance as well. In this respect, reference is made to a case of similar nature titled "*Azmatullah v. The State*" (2016 YLR 361). Furthermore, the evidence of the prosecution is all documentary and already with the concerned investigating authority, hence tampering with the same is out of question. In this respect, guidance is sought from the case of "*Saeed Ahmed v. The State*" (1995 SCMR 170).

8. The offence with which the applicant is charged does not come under the prohibitory clause of Section 497(1) Cr.PC and in such like cases grant of bail is a rule and its refusal is an exception. Reference is made to the case of "*Muhammad Younas v. The State*" (2016 P.Cr.L.J 593). The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him but no satisfactory reparation can be offered to an innocent person for his unjustified incarceration at any stage of the case, albeit his acquittal in the long run. Despite remaining in police custody petitioner has made no confession before the competent Court, connecting him with the commission of offence. He is behind the bar since his arrest and no more required

to the FIA authorities for further investigation, therefore, keeping him behind the bar would serve no useful purpose.

9. In view of the peculiar facts and circumstances of the case, as well as the dictum laid down, I am of the opinion that he is entitled to bail and for this reason, he was admitted to 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 the trial Court by my short order dated 03.09.2021. These are the detailed reasons for the same.

10. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case.

**J U D G E**

Ali Haider