

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

Criminal Bail Application No.S-535 of 2021

Applicant : Manzoor Ali S/o Mewo Khan through Mr.
Ashfaque Ahmed Lanjar, advocate.

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

Date of hearing : 13.08.2021.
Date of order : 13.08.2021.

O R D E R

Khadim Hussain Tunio, J. – Through instant Criminal Bail application, the applicant / accused Manzoor Ali seeks his admission to post-arrest bail in Crime No. 01 of 2021, registered with P.S FIA Cyber Crime Reporting Center, Hyderabad, under Sections 13, 14, 16 and 17 of PECA r/w Sections 109, 419 and 420 PPC.

2. Brief facts of the instant case are that an FIR was lodged by SHO of Police Station Mithi on the orders of the learned District and Sessions Judge, Tharparkar at Mithi through an order dated 25.03.2017 after a complaint was placed before him by the SHO of PS Mithi regarding a person taking the role of the Sessions Judge having cell number 0337-0390128 who was making scam calls to people and offering them government jobs and cheating the people and in return taking bribe. After registration of the FIR, the investigation was transferred to the FIA Cyber Crime Division on the order of Civil Judge/JM-1 Mithi dated 19.07.2017. During investigation, FIA obtained CDR and detail of alleged cell number and on that basis, they arrested co-accused Muhammad Ashraf who, during interrogation, admitted to have indulged in the offence in collusion with present applicant / accused Manzoor Ali. Upon such disclosure of co-accused, the FIA officials with the help of co-accused, called the applicant / accused Manzoor Ali, setting up a sting operation, for the purpose of meeting with a party for a government job and the applicant confirmed that he will be available at AB Restaurant near Ali Palace, Qasimabad. As applicant / accused Manzoor reached there, FIA officials encircled him and apprehended him. They asked him about mobile number 0337-0390128 whereupon he voluntarily admitted that he had looted huge amount, fraudulently, from innocent people in order to getting them

government jobs. Further, he voluntarily produced one Itel mobile phone with two SIM cards and one Q-mobile phone with two SIM cards.

3. Learned counsel for applicant argued that the applicant is innocent and has been falsely implicated in the present case; that that the applicant has been joined as accused on the basis of statement of co-accused Muhammad Ashraf, which is inadmissible as per Article 38 of the Qanun-e-Shahadat Order, 1984; that prosecution has failed to bring direct evidence against the applicant for connecting him with the commission of alleged offence; and that the case of applicant requires further inquiry; that the applicant is suffering from worsened health which has led to serious hardship and further incarceration can be life-threatening to him.

4. Conversely, learned Deputy Attorney General Pakistan argued that the basis of the present case is a written complaint filed by the SHO of Police Station Mithi and no enmity existed against the applicant; that sufficient material is available on the record against the applicant, particularly his conversation with co-accused Muhammad Ashraf; that applicant has committed a repulsive crime of taking the amount of poor people by way of fraud; that the medical conditions, if any, the applicant suffers from are not life-threatening and can be treated in jail. Lastly, he prayed that present Criminal Bail Application may be dismissed.

5. I have heard learned counsel for applicant/accused, Learned DAG and perused the material available on record.

6. It is a matter of record that the applicant, in collusion with co-accused Muhammad Ashraf impersonated a District and Sessions Judge and illegally and fraudulently offered to get government jobs to people. After receiving a complaint, learned District and Sessions Judge ordered for the registration of an FIR after which the investigation was entrusted to FIA Cyber Crime Division. During investigation and obtaining CDR of the number 0337-0390128, the first arrest was made of co-accused Muhammad Ashraf who admitted before the FIA authorities that he was involved in the said crime along with the present applicant / accused. A call was made by the co-accused on the orders of the FIA authorities to set up the applicant / accused for a meeting with a supposed party that was interested in getting a job and on the phone, the applicant confirmed his availability at AB Restaurant at Ali Palace, Qasimabad. The applicant was apprehended on the said spot by the FIA authorities who recovered two different sets of mobile phones, each having two SIMs and one of them being a black Q-mobile L106 Lite having IMEI No. 352703110443440 and 352703110443457 and having the same U-Fone number that was originally reported being 0337-0390128. His arrest then led to the finding that the present applicant was in constant contact

with the co-accused and were both involved in the misappropriation and that the applicant / accused receiving the money in his Jazz Cash and EasyPaisa account registered on the number 0300-3240626, tracing back to the applicant / accused's CNIC No. 45402-175224-7. Sufficient material is available on the record to connect the applicant / accused with the commission of the offence where he has cheated the public by posing as a public servant and taking huge sums of money in ex-change for hopes of getting people government jobs.

7. The argument of learned counsel for the applicant that the offence with which the applicant is charged does not fall within the prohibitory clause of section 497, Cr.P.C. and in such like cases, bail is a rule and refusal an exception, is of little help to him. No doubt, bail in offences punishable with less than ten years of imprisonment is ordinarily granted as a rule, however, the concession is to be extended having regard to the facts and circumstances of each case and in appropriate cases, the Court may justifiably depart from the rule to deny the favour. While the offences charged do not fall within the prohibitory clause of S. 497 Cr.P.C, in such like cases the grant of bail is not a right of the accused, rather a concession and since the applicant is involved in crimes against the society at large, this Court is inclined to not show leniency in his case as the offence with which he is charged affects the whole society and the impact of this crime is devastating not only to those who are being stolen from, but also the State. Moreover, crimes of nature alike the ones in this case are quite distinguishable from ordinary criminal offences and guidance in this regard can be taken from the principles laid down by the Hon'ble Supreme Court of Pakistan in the case of *Imtiaz Ahmed v. State (PLD 1997 SC 545)*, wherein in para-7 of the judgment it was observed as follows:--

"7. I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by an individual in his private capacity and an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497, Cr.P.C. in the absence of an exceptional circumstance may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentences is less than 10 years' R.I. for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.

The Courts should not be oblivious of the fact that at present Pakistan

is confronted with many serious problems/difficulties of national and international magnitude, which cannot be resolved unless the whole Pakistani nation as a united entity makes efforts. The desire to amass wealth by illegal means has penetrated in all walks of life. The people commit offences detrimental to the society and the country for money. Some of the holders of the public office commit or facilitate commission of offences for monetary consideration. In the above scenario the Courts' approach should be reformation-oriented with the desire to suppress the above mischief. To achieve the above objective, it is imperative that the Courts should apply strictly the laws which are designed and intended to eradicate the above national evils but at the same time, they are duty bound to ensure that the above approach should not result in miscarriage of justice."

8. As far as bail on medical grounds is concerned, it was already concerned by the learned trial Court. Even otherwise, defense counsel has failed to produce any material documents that would show the illness of the applicant being life-threatening nor was a request made for forming of a Medical Board for examination of the applicant's condition. The case does not qualify as the applicant's previous history of illness is not detrimental to his health and can be treated in the jail hospital with the necessary medication as per the report called from the concerned jail authority by the trial Court and the reports also available on the record. In this respect, reliance is placed on the case law reported as *Sharjeel Inam Memon v. National Accountability Bureau (2018 SCMR 2023)*.

9. In today's society, indulging in dishonest practices and misappropriation of funds has become a de facto recognized norm of our society, which is corroding the entire edifice of our State. If serious steps are not taken to curb the menace of gnawing corruption at this point in time, then this country will not be able to tackle the tumor that will grow to an advanced stage. In view of the above reasons, prima facie, there appear to be reasonable grounds for disentitling the applicant from the concession of bail. Consequently, instant bail application of the applicant was dismissed for the reasons, vide short order dated 13.08.2021.

10. Needless to mention here that the observations made herein above are tentative in nature and shall not affect the merits of the case at the trial.

J U D G E

Irfan Ali