

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 2414 of 2021

Applicant : Imran Naseer s/o Naseer Ahmed, through
Mr. Muhammad Jamil, advocate

Respondent : The State, through Mr. Chaudhry Waseem
Akhtar, Assistant Attorney General *along
with S.I Rana Akbar of F.I.A., AHT Circle,
Karachi*

Intending : Mst. Almas Noor & two others, through
Migrants Mr. Inayullah Khan Bughti, advocate

Date of hearing : 04.03.2022
Date of order : 04.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Imran Naseer s/o Naseer Ahmed being abortive to get the relief of post-arrest bail from Sessions Judge Malir, Karachi in Cr. Bail Application No. 5108 of 2021, vide order dated 19.11.2021, through instant application seeks the same relief from this Court in Crime/F.I.R. No. 16 of 2021, registered at P.S. F.I.A., AHT Circle, Karachi under sections 3 & 6 of the Prevention of Smuggling of Migrants Act, 2018 (*the "Act"*).

2. It is alleged that the applicant along with co-accused Muhammad Hayat s/o Ibrahim Gul Khan is engaged illegally in the smuggling of migrants and he arranged illegal entry of intending migrants, namely, Mst. Almas Noor d/o Noor Muhammad, her son Asam Khan s/o Imran Khan and her daughter Noor-ul-Haram d/o Imran Khan into Turkey without any travel documents by crossing Pak-Iran and Iran-Turkey borders against benefit i.e. Rs. 12,00,000/- and he kept them in Dogubeyazit and Van cities of Turkey in hostage for nine days as part of the activity of an organized criminal group, for that he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case by the complainant due to mala fide intention and ulterior motives in order to harass and blackmail him; that there is no documentary proof of the allegation leveled by the complainant against the applicant; that the prosecution has failed to collect any evidence against the applicant to connect him with the commission of alleged offence; that the alleged offence under section 3 of the Act does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under section 6 of the Act carries lesser punishment of five years; that the applicant is confined in jail since 15.10.2021 and the trial shall take some time; therefore, no purpose would be served for keeping him in custody for indefinite period; hence, the applicant is entitled for the bail on the ground of further inquiry.

4. Conversely, learned Assistant Attorney General has resisted grant of bail to applicant on the ground that the applicant, as a member of an organized criminal group, is engaged in the smuggling of migrants for which he received huge amount from the complainant as benefit and the prosecution has sufficient evidence to connect him with the commission of alleged offence which is punishable with imprisonment for fourteen years; hence, he is not entitled for the concession of bail.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. It appears from the perusal of the record that Sub-Inspector Nazar Hussain Shah had lodged the aforesaid F.I.R. in consequence of Enquiry No.110/2021, dated 11.02.2021, of FIA, AHT Circle, Karachi initiated upon receipt of Deportee/ Detainee, which revealed that Mst. Almas Noor, her

son Asam Khan and daughter Noor-ul-Haram (*"intending migrants"*) had arrived at Jinnah International Airport, Karachi by flight No.PC-130, dated 11.02.2021, on the strength of Emergency Passports from Istanbul (Turkey) with remarks "illegal entry into Turkey/Self/Voluntarily Return", who were referred to FIA, AHT Circle, Karachi. On asking about their departure from Pakistan, they disclosed that they had left Pakistan through illegal route by crossing the border illegally without any travel documents with the help of the agents against payments; hence they were detained by the F.I.A. for further verification and necessary legal action at their end. It further appears that in the end of 2019 intending migrant Mst. Almas Noor was desirous to proceed abroad/Turkey for the purpose of employment and in this connection she came in contact with migrant smugglers, namely, Muhammad Hayat and Imran Naseer (*present applicant*), who demanded Rs. 300,000/- for her smuggling with her aforesaid two children to Turkey. She then on the instructions of said migrant smugglers reached Quetta along with her two children where an associate of migrant smugglers received an amount of Rs.300,000/- from her and took them to Turkey by crossing the respective borders of Pak-Iran-Turkey in 07 days and reached Dogubeyazit/ Van city of Turkey where migrant smugglers Muhammad Hayat and present applicant kept them in safe house for 09 days and demanded Rs.9,00,000/- for their release. The brother-in-law of Mst. Almas Noor paid the amount through banking channel from Pakistan by depositing Rs. 4,00,000/- in the account of one Muhammad Awais; Rs. 4,00,000/- in the account of one Muhammad Sohail and Rs. 1,00,000/- in the account of one Kamran Nasser (*the brother of the applicant*). After making said payment, Mst. Almas Noor and her children were released from safe-house, who then

approached to Embassy of Pakistan at Istanbul and got the Emergency Passports issued and, thereafter, they came back to Pakistan.

7. It may be observed that smuggling of the migrants is a truly global concern. Now-a-days, with the ever-growing interdependence of the global economy, the involvement of criminal groups on the smuggling of migrants is on the rise, which has an impact on the countries of origin, transit and destination. In countries of origin, families go into debt in order to pay the smuggling fee. Even worse, they are left with no news from their relatives, not knowing whether they are dead or alive. In transit countries, smuggled migrants become stranded with limited means of continuing their journey or deceived by the smugglers who recruit for their criminal activities; thus their illicit activities have an impact on the areas along the routs they use. Attempting to intercept smuggled migrants and combat the crime places is significant strain on the resources of countries of destination. It may also be observed that the offences of smuggling of migrants are frequently reported to have been committed without any restriction in all the provinces of Pakistan through agents and members of organized criminal groups. The present intending migrants are lucky in a sense as they returned safely.

8. From tentative assessment of the evidence on record, it appears that the applicant is engaged as a member of an organized criminal group in smuggling of migrants, who arranged illegal entry of intending migrants without any travel documents through illegal routes. The allegations against the applicant are of serious nature. There is no element of enmity of intending migrants with the applicant for implicating him falsely with the commission of alleged offence. Applicant's claim with regard to his false implication due to mala fide intention and ulterior motives in order to

harass and blackmail him is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. The amount of hostage money/benefit i.e. Rs. 9,00,000/- has been paid to accused persons through banking channel hence, sufficient documentary evidence in this regard is available on record. The alleged offence under Section 6 of the Act carries punishment with imprisonment for a term which may extend to fourteen years but which shall not be less than five. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the Statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right.

9. For the foregoing facts and reasons, I am of the view that, *prima facie*, sufficient evidence against the applicant is available with the prosecution to connect him with the commission of alleged offence; hence, this bail application is dismissed. Needless to mention here that the observations made herein-above are tentative in nature for the disposal of instant bail application and the same would not influence the trial Court while deciding the case of accused on merits.

10. Above are the reasons of my short order dated 04.03.2022, whereby instant Cri. Bail Application was dismissed.

JUDGE

Athar Zai